

**TORREY HIGHLANDS SUBAREA PLAN
APPENDIX A**

**SCHOOL FACILITIES
AND FINANCING PLAN
OF THE
NORTH CITY FUTURE URBANIZING AREA
SUBAREA IV - TORREY HIGHLANDS**

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SCHOOL FACILITIES AND FINANCING PLAN OF THE NORTH CITY FUTURE URBANIZING AREA SUBAREA IV - TORREY HIGHLANDS

I. INTRODUCTION

This School Facilities and Financing Plan (Schools Financing Plan) has been prepared by the Poway Unified School District (School District) to determine the impacts of development of the Torrey Highlands Subarea Plan (Subarea Plan) in the North City Future Urbanizing Area (NCFUA) on the school facilities needs of the School District and to provide a method of financing and delivering school facilities consistent with the policies of the NCFUA Framework Plan, February 1995 (Framework Plan) adopted by the City of San Diego (City) which forms a portion of the City's General Plan and Progress Guide (General Plan).

The Framework Plan requires the School District to prepare a school facilities financing plan in cooperation with the City and Subarea IV property owners. The Framework Plan requires that the precise location of all selected public school sites be incorporated into each Subarea Plan. In addition, Framework Plan Section 8.3f states that:

“No Subarea Plan will be adopted by the City Council without a letter from the relevant school district(s) indicating that the School District concurs with siting, phasing, and financing plans established by the Subarea Plan or by a concurrent school facility planning process. No subarea plan will be adopted without an agreement with the respective school district to compensate for any additional impact the development may have on schools.”

To that end, a cooperative effort was launched between the City, the Applicant, other landowners within the Torrey Highlands portion of Subarea IV and the School District in the early stages of the planning for the Subarea Plan. Consultations were initiated to determine school site locations in the Subarea based on criteria established by the School District and by the State of California.

This Schools Financing Plan is the product of that effort and is incorporated as Appendix A to, and is an integral part of, the Subarea Plan. (See Subarea Plan Section 8.3.2.) This Schools Financing Plan draws upon and forms a part of the School District's Districtwide Master Plan, and is based upon extensive analysis of demographic and enrollment trends in existing and other proposed future development. It considers existing facilities utilization, other future facilities needs and future financial resources. It is heavily influenced by the School District's educational philosophy. As with the Districtwide Master Plan, the Schools Financing Plan is intended to be a dynamic document as the Subarea Plan is implemented after a Phase Shift occurs.

II. EDUCATIONAL GOALS AND POLICIES

The Poway Unified School District (School District) is located in the northeastern portion of San Diego County. More specifically, the School District serves the communities of Poway, Rancho Bernardo, Rancho Peñasquitos, Carmel Mountain Ranch, Sabre Springs and a portion of the county of San Diego. The School District's student enrollment is approximately 30,000 students. These students are currently served in 19 elementary schools, five middle schools, three high schools, and one continuation high school. Over 60 percent of the School District's enrolled students live in the City of San Diego.

The overall goal of the School District is "to ensure that each student will master the knowledge and develop the skills and attitudes essential for success in school and in a diverse society." The eight core values listed below are utilized by the School District to accomplish its mission:

1. All Students Learning

We are committed to all our students learning. We will ensure that each student, to the best of his or her ability, will master the knowledge and develop the skills and attitudes essential for success in school and in a diverse society.

2. Parents as Partners

We are committed to promoting student learning through parent partnerships that...

- Involve parents in their child's education.
- Foster shared responsibility among students, parents and staff.
- Link families with school and community resources.
- Encourage broad-based representation in the decision-making process.

We believe parents make a difference.

3. Excellence in All We Do

We are committed to...

- Our collective contribution to learning.
- High levels of performance.
- Adapting to the needs of our diverse population.
- Pride throughout our organization.

4. Emphasis on Basic Skills

The basic skills necessary include, but are not limited to, the development of...

- Mastery of the basic skills of computation, writing, reading, spelling and speaking.
- An understanding of, and commitment to, moral precepts and ethical behavior.
- Self-confidence and self-esteem.
- Research skills.
- Civic understanding.
- Consumer understanding.
- Career understanding.
- Effective decision-making processes.
- Careful stewardship of natural resources.
- Physical and mental health including knowledge concerning sex and social diseases.
- Appreciation of art, music and foreign languages.
- A thirst for knowledge.
- Respect for others and for property.
- Understanding the risks of drug, alcohol, and tobacco use and the development of an attitude against its use.

Simply, the goal of the School District is to ensure that all students and staff optimize their knowledge and acquire the skills necessary to be successful in society.

5. Safe, Orderly and Attractive Environment

We are committed to providing and maintaining a safe, orderly and attractive environment which promotes productivity and stimulates learning.

6. Effective Management of Resources

We are committed to aggressively seeking and to creatively and effectively managing our resources. These include students, community, finances, technology, time, facilities and other physical resources.

7. Competent and Caring Staff

We are committed to selecting, developing and supporting the best possible staff that...

- Understands and contributes to the learning process.
- Cares about students.
- Performs at a high level.

- Respects and supports others.
- Acts in an ethical manner.
- Seeks improvement through continuous learning.
- Communicates appropriately and effectively.
- Values the uniqueness of each individual.

8. Staff Participation in Decision Making

We are committed to making effective decisions through the extensive involvement of staff affected by the decision.

III. FACILITIES IMPACT ON THE POWAY UNIFIED SCHOOL DISTRICT

1. The School District's "Future Development Area"

The scope of the school site location and planning decisions contained in this Schools Financing Plan draws on information and planning decisions made in the context of the Districtwide Master Plan. The Master Plan provides a comprehensive basis for school facilities planning throughout the School District's "Future Development Area" that includes both the City's North City Future Urbanizing Area (NCFUA) and the future development areas north of the NCFUA that are within the land use planning jurisdiction of the County of San Diego (county) and that include the Santa Fe Valley, 4S Ranch and Christopherhill projects. The School District's Future Development Area comprises approximately 6,000 acres of land and current planning data suggest that approximately 14,000 residential dwelling units could be built in the Future Development Area.

2. The NCFUA and Torrey Highlands

The NCFUA is a "Future Urbanizing Area" located in the northwest portion of the City of San Diego (see Framework Plan). The NCFUA contains five Subareas covering approximately 12,000 acres. Subareas I and IV are located entirely within the School District's jurisdiction, as is a small portion of Subarea V which is planned to include mostly open space, but could include 22 single-family housing units as proposed in the environmental impact report issued by the City of San Diego dated April 1996.

The Subarea Plan consists of three distinct neighborhoods, subregional land uses, and a resource protection area. While Subarea IV is approximately 1,520 acres, the Torrey Highlands portion of Subarea IV is approximately 1,134 acres because the 386-acre Fairbanks Highlands portion of Subarea IV, owned by Koll/Signal Landmark, processed a map under the A-1-10 Zone and is not included as part of the Subarea for phase shift purposes. The development impact analysis in this Schools Financing Plan includes only the Torrey Highlands portion of Subarea IV.

3. Torrey Highlands Residential Development

The projected absorption schedule utilized for this Schools Financing Plan was prepared by a consultant retained by the proponents for the Torrey Highlands Subarea IV Phase Shift planning effort. This information is based on input from the City Planning Department, the proponents for the Phase Shift within Subarea IV and their consultants.

Unit Type	Units
Single-family Detached	2,122
Multifamily Attached	478
Total:	2,600

These units are projected to be constructed over a 12-15 year period.

NOTE: Much of this data includes projections over a 12-15 year period and relies on specific development assumptions that may differ from actual development during this period. For example, these projections assume that certain demographic data, such as the absorption schedule, product mix and SGF will be valid over a 15-year period. In addition, this Schools Finance Plan assumes that information regarding educational programs for the School District will stay constant over the same period. Therefore, to maintain as much accuracy as possible, and to consider unforeseen changes in data assumptions, School District educational programs and State statutes, these enrollment projections must be revised periodically as new data and program information becomes available.

4. Enrollment Projection Methodology

In order to analyze the impact of new residential development of Torrey Highlands on the School District, it is necessary to determine the number of students generated per dwelling unit type by Grade Level (K-5 elementary school, 6-8 middle school and 9-12 high school), which are called Student Generation Factors (SGF). The SGF is defined as the number of students generated per dwelling unit for each grade level. SGF calculated for detached and attached dwelling units are obtained by historical and ongoing analysis within the School District that takes into consideration fertility rates and Cohort Survival Factors (e.g., the number of students who progress from one grade level to the next) experienced by the School District in recent years. The SGF as follows.

Grade Level	SGF Detached	SGF Attached
Elementary School (K-5)	.34	.175
Middle School (6-8)	.18	.07
High School (9-12)	.29	.10
Total	.78	.345

5. Total Student Impact

The number of students to be generated by residential development in the Torrey Highlands portion of Subarea IV is calculated by multiplying projected residential development by Student Generation Factors (SGF). The result of this calculation is shown in the following table that summarizes the total student enrollment in the School District by grade level anticipated to be generated from Torrey Highlands and are extracted from the Proposed Absorption Schedules prepared by the School District's financing consultant based on information provided by the Applicant's consultants.

Grade Level	Detached	Attached	Total Number of Students
Elementary School (K-5)	721	84	805
Middle School (6-8)	382	33	415
High School (9-12)	552	48	600
Total Number of Students	1,655	165	1,820

The Proposed Absorption Schedules are maintained by the School District's planning staff and indicate the number of students generated on an annual basis in the Subarea and are separated into elementary, middle and high school grade levels. This data is used to estimate the need for interim facilities and to project the bond financing needs of the School District in order to provide facilities on a timely basis.

6. Permanent School Facility Impact

As a result of the total projected student impact, it is anticipated that mitigation will be required for approximately 1,820 students after buildout. Of the total students, approximately 805 will be elementary school students, 415 will be middle school students and 600 will be high school students. When divided by the adopted school design capacity of 701 for elementary, 1,380 for middle and 2,140 for high, it is anticipated that the project will generate a need for a total number of schools as follows.

Grade Level	Total Number of Students	School Design Capacity	New Schools Required
Elementary School (K-5)	805	701	1.15
Middle School (6-8)	415	1,380	0.30
High School (9-12)	600	2,140	0.28

7. School Site Needs and Identification

In accordance with School District Board Policy 6.30, Section 6.32, Acquisition of School Sites, each school is to be located on sites containing net usable acres as follows.

Grade Level	Minimum Size
Elementary School (K-5)	10 net usable acres
Middle School (6-8)	25 net usable acres
High School (9-12)	60 net usable acres

The minimum size for the elementary school provided in the Subarea Plan was increased to 11 acres to provide additional room for a child care facility consistent with Framework Plan policies. As a result of 805 elementary students (i.e. 1.15 elementary schools) projected for the Torrey Highlands, one 11-acre elementary school site has been located within the central neighborhood of Torrey Highlands.

A middle school site is located on the border of Subarea I and Subarea IV and includes land that must be acquired from Black Mountain Ranch, the Fairbanks Highlands project and some smaller ownerships within Torrey Highlands. It is north of the intersection of Carmel Valley Road and Camino Ruiz.

Based upon the generation of high school students, but more importantly on other planning factors including the location of existing and planned high schools within the School District and the location and dispersion of the existing and projected high school student populations, the School District determined that it was necessary to include a High School Site within the Torrey Highlands area. Figures 4-1 and 4-2 of the Subarea Plan show the proposed land uses for Subarea IV and the proposed sites of the elementary, middle and high school. The existing elementary school and middle school shown on the eastern boundaries of the Subarea Plan are already at or above capacity and it was, therefore, necessary to identify additional school sites to accommodate development impacts of the Subarea Plan.

IV. PLAN DEVELOPMENT AND IMPLEMENTATION

The overall goal of this Schools Financing Plan is to provide a method to assure that the impacts on the need for school facilities generated by the development of Torrey Highlands will be mitigated to a level of insignificance.

1. Framework Plan Requirements

The Framework Plan requires that subarea plans be developed and then submitted to and approved by City Council before an area is submitted to the electorate for possible approval of a Phase Shift. A Phase Shift involves a change in the area's land use category from Future Urbanizing to Planned Urbanizing pursuant to Proposition A. A Phase Shift may only occur if appropriate ballot language is approved by the City Council and placed on a ballot for voter approval.

The Framework Plan specifies a number of required elements to be addressed in a subarea plan. With respect to schools, the Framework Plan contains a number of requirements including the following.

“8.2b A school facility financing master plan shall be prepared by the affected school district in cooperation with the City and landowners. The master plan will consider student generation rates; size; location; and composition of facilities; school district boundary adjustments; transportation routes; facility costs; and funding alternatives.”

“8.2c No subarea plan will be adopted by the City Council without concurrent adoption of designated school, park, library, and fire station sites to sell those sites to the relevant school district(s) or the City. The purchase agreement shall set the price so that it is equal to the market value of the site(s) based on uses allowed by zoning regulations in place prior to the time the subarea plan is adopted, plus interest paid at an agreed-upon rate from the date of the Agreement to the date of the actual purchase. The purchase agreement(s) shall specify that if the City or school district(s) purchases the land at the stated price, the owner(s) will be permitted to develop the remainder of their property as specified in the subarea land [sic, plan], subject to relevant City, state and federal regulations.”

“8.3f No subarea plan will be adopted by the City Council without a letter from the relevant school district(s) indicating that the District concurs with siting, phasing and financing plans established by the subarea plan or by the concurrent school facility planning process. No subarea plan will be adopted without an agreement with the respective school district to compensate for any additional impact a development may have on schools.”

2. Mitigation Agreement and Transfer Agreements

Consistent with these Framework Plan requirements, the School District worked with City Planning Staff and the Subarea Plan applicant to incorporate the necessary school sites into the Subarea Plan land use designations. In an effort to comply with the Framework Plan requirements and fully mitigate to a level of insignificance the anticipated impacts on the need for school facilities that will be caused by the development of the Torrey Highlands project, the School District met with the Subarea Plan applicant and other affected landowners in an effort to develop (i) a Subarea IV Torrey Highlands School Impact Mitigation Agreement (Mitigation Agreement) with all thirty-seven (37) landowners within Torrey Highlands and (ii) a School Site Transfer Agreement and Escrow Instructions (Transfer Agreement) with each owner of any portion of a designated school site.

Exhibit 1 to this Schools Financing Plan is a copy of the Mitigation Agreement which is incorporated into and forms an integral part of this Schools Financing Plan. The Mitigation Agreement is the agreement referred to in Framework Plan section 8.3f that is intended to provide the method by which any additional impact of the development on the need for school facilities will be mitigated. The Transfer Agreements were to have satisfied the requirements of Framework Plan section 8.2c regarding the transfer of school sites.

While less than thirty-seven (37) landowners have entered into the Mitigation Agreement and only one owner of designated school site land has entered into a Transfer Agreement, future compliance with a series of “School Facilities Provisions” included in the Subarea Plan text, the Resolution approving the Subarea Plan, the ordinance submitting the Phase Shift to the electorate and the mitigation measures in the Final Environmental Impact Report (EIR) will assure that development impacts on the need for school facilities will be fully mitigated.

3. Timing of School Facilities

The first step in constructing the School Financing Plan was to determine the timing for delivery of required facilities. As discussed in more detail below, the timing of the construction of the school buildings is determined by the School District Board Policy and by Framework Plan requirements, but in response to suggestions by owners of designated school sites, the Schools Financing Plan creates the opportunity to acquire school sites at an earlier date than otherwise required by the Framework Plan. This was done in an effort to create cost savings.

A. Construction of Buildings

School District Board Policy 6.33 requires that school facilities be provided when certain “enrollment thresholds” are reached. This policy for the timing of delivery of school facilities is incorporated in the Framework Plan at Section 8.3d and Table 8.3c, which requires, for example, that elementary school facilities must be available for occupancy when 360 elementary students have been generated. The enrollment thresholds are as follows.

School Type	Threshold	School Size
K-5	360	701
6-8	600	1,380
9-12	1,202	2,140

Because the Torrey Highlands project generates the need for more than one whole elementary school, construction of the elementary school will be timed based on student generations within the Subarea Plan. Because of their larger size, the middle school and the high school will serve students from a wider area than the Subarea Plan and therefore, the timing of their construction will be initiated by the School District based on the Districtwide Master Plan that looks at student generations within the larger projected attendance area boundaries of those schools. It is expected those schools will include students from elsewhere in the School District beyond Subarea IV.

In order to open a school at the threshold point, planning and construction of the elementary facility must commence approximately 48 months and 60 months, respectively, prior to meeting Districtwide thresholds for attendance at these schools.

B. Acquisition of Land

During the course of consultations with the Torrey Highlands landowners regarding formulation of this Schools Financing Plan, it was recognized that land acquisition cost is a very important variable that can have a dramatic effect on the total cost of school facilities per residential unit. It was recognized that land costs could be controlled by acquiring the school sites at a time relatively sooner than the enrollment thresholds would require. Accordingly, the School District engaged in negotiations with owners of school sites within the Subarea Plan seeking early acquisition at lower costs than could otherwise be expected if the sites were acquired later. The School District has not yet completed such an early-acquisition-lower-cost acquisition but the School District has entered into (but not yet closed) one Transfer Agreement on that basis and will continue to work on other such school site acquisitions. Until those acquisitions are completed, it has been necessary for the purposes of this Schools Financing Plan to assume that school sites will not be acquired until the “enrollment thresholds” requiring school construction are reached at a price not exceeding \$265,000 per acre (increased by an index to the date of acquisition). Any cost savings achieved by earlier acquisition allows the School District to reduce its facilities cost assumptions and make a corresponding reduction in the amounts paid by landowners under the Mitigation Agreement.

Since the drafting of the Framework Plan language, it has been necessary to address an additional concern—biological mitigation for school sites. The School District will work with City staff and the resource agencies to establish an appropriate and acceptable means of addressing mitigation costs, ideally through a development agreement with the City of San Diego.

4. Subarea Plan School Facilities Provisions

By the time the Subarea Plan text was ready for City Council review in July 1996, the School District had completed negotiations of the Mitigation Agreement in the form attached as Exhibit 1 of this Schools Financing Plan and had entered into the Mitigation Agreement with a number of landowners representing a substantial portion (but less than all) of the land area of Torrey Highlands. Also, the School District had not been successful in negotiating any Transfer Agreements. Thus, the Subarea Plan was in a condition that would not permit it to be submitted to the City Council pursuant to the above quoted Framework Plan requirements because it would not be possible to concurrently adopt purchase agreements for school sites and a Mitigation Agreement to provide for the full mitigation impacts on the schools.

In response to that circumstance, the School District, the City planning staff, the project applicant and other interested landowners attempted to develop some alternative to the Framework Plan requirements that would allow the Subarea Plan to move forward while still providing assurance that the impacts on school facilities would be fully mitigated. That effort resulted in the City Manager proposing language to be inserted in the Subarea Plan adoption resolution providing that the

“Subarea Plan will become effective after purchase agreements and mitigation agreements have been concluded.” (Manager’s Report No. P-96-166, July 24, 1996, p. 7). Subarea Plan Approval Resolution R-287749, Section 5(v) provides that the Subarea Plan shall not be effective until all listed events have occurred, including the requirement that “the owners of 80 percent of the acreage within the Torrey Highlands Subarea Plan have approved the School Financing Plan by executing a School Impact Mitigation Agreement with the Poway Unified School District.”

In addition, various other "School Facilities Provisions" were inserted into the Subarea Plan text, the Final Environmental Impact Report Mitigation Measures and the Phase Shift Ordinance to assure that Transfer Agreements and a Mitigation Agreement will be entered into with the School District by each owner of school site land and each owner of land within Subarea IV, respectively, before rezoning applications are made by such owners in order to develop their property at any zoning higher than A-1-10 and consistent with the higher density land use designations provided in the Subarea Plan.

The School Facilities Provisions were approved by the School Board on July 29, 1996, and on that basis the School District provided the certification required by Framework Plan Section 8.3f that the impacts of development on the need for school facilities will be fully mitigated if the School Facilities Provisions are carried out.

A. Subarea Plan Text

The following School Facilities Provisions were inserted in the Subarea Plan text to provide a means by which the various Framework Plan requirements with respect to schools quoted above, could be satisfied as of some date after City Council approval of the Subarea Plan and its submission to the electorate. The following items were inserted in the Subarea Plan text to achieve that purpose.

“6.1 IMPLEMENTING PRINCIPLES...

- *Provide for the adoption of the schools financing and phasing plan before accepting any application for the rezoning of property or approve any permit application to increase density entitlements within the Subarea.*
- *Provide for execution of mitigation agreements and purchase agreements for designated school and neighborhood park sites by individual applicants before accepting any application for the rezoning of property or approve any permit applications to increase density entitlement for such property.”*

“8.3.2 School Facilities

Development projects within Torrey Highlands will be required to comply with school financing and phasing as set forth in a School Facilities and Financing Plan (see Appendix A) prepared expressly for Subarea IV, and in concert with the Poway Unified School District (PUSD). No development within Subarea IV may occur prior to inclusion of the School Facilities and Financing Plan as Appendix A of this Subarea Plan. No owner of land in Subarea IV may apply for

the rezoning of property or any other permit to increase density entitlements for such property unless such owner has provided for the full mitigation of development impacts on the need for school facilities by (i) the execution of a school mitigation agreement between PUSD and the property owner seeking development approvals and (ii) if such owner has land designated as a school site, the execution of a school site purchase agreement consistent with Section 8.6.1 between PUSD and the property owner seeking development approvals. The Subarea Plan includes elementary school and high school sites within Torrey Highlands, which are in addition to the elementary school and middle school already located within the area. Provisions for the acquisition of property for the eventual construction of the schools shall be contained in the School Facilities and Financing Plan consistent with the provisions of the Framework Plan and shall be the subject of certain mitigation agreements for property containing designated school sites. Further discussions of school facilities are provided in Chapter 6, Community Facilities.”

“8.3.3 School Mitigation Condition

All impacts of development of the Torrey Highlands portion of Subarea IV on the facilities needs of the Poway Unified School District (the "District") shall be fully mitigated Prior to processing any application for rezoning or any permit to increase density entitlements within the Subarea, the City shall include as Appendix A of this Subarea Plan, a School Facility Plan which provides that each property owner within the Subarea shall enter into a mitigation agreement with the District (the “Mitigation Agreement”) setting forth the terms and methods of fully mitigating impacts of development on the District through participation in a community facility district (“CFD”) pursuant to the Mello-Roos Community Facilities Act of 1982. Any owner of property at a zoning greater than A-1-10 prior to the inclusion of their property in the CFD shall pay to the District the following amounts for each attached or detached residential unit:

\$18,391 per Detached Residential Unit

\$7,891 per Attached Residential Unit

The amounts shall be increased as of January 1 of each year commencing January 1, 1997 by the percentage change in the “index” and in the manner provided in the Mitigation Agreement. Such impacts will be fully mitigated only if the Mitigation Agreement is fully performed. Therefore, continued performance under the Mitigation Agreement shall be a “condition of approval by the City for any future zoning decision, tentative map, subdivision map, building permit or or other development entitlement approval or any portion thereof (collectively "entitlement"). Within ten (10) days following written request delivered to the District by the City or any applicant, subject to holidays and delays beyond reasonable control of the District, the District shall submit to the City, with a copy to any entitlement applicant requesting same, a certificate indicating the status of the continued performance of the Mitigation Agreement.”

“8.4.1 Zoning

At the time of the Subarea Plan preparation, the property within the subarea was zoned A-1-10, an agricultural zone permitting one dwelling unit per ten acres. Neither this Subarea Plan nor a successful phase shift shall constitute a rezoning. Users at densities higher than A-1-10 shall require a rezoning application. Property owners shall be required to make application for rezoning consistent with the Subarea Plan’s land use designations in order to develop at densities greater than allowed in the A-1-10 zone as contemplated by the Subarea Plan. Approval of rezoning applications may be granted only if such application is consistent with the policies and requirements of the Framework Plan, this Subarea Plan and applicable environmental documents.

In 1991, the City of San Diego began work on a comprehensive revision of its Municipal Code (Zoning Code Update) as it relates to permit processing, land uses and development regulations. The new code, upon adoption, will be known as the Land Development Code. The initial task of the Zoning Code Update, already approved by City Council, was to make changes to permit processing procedures. The remaining task, revisions to land uses (the renaming and reformatting of existing zones and the creation of new zones) and establishment of refined development regulations, are currently the subject of public review and hearings. Upon adoption of the Land Development Code, renamed and reformatted zones will replace the current zones. The new zones will be applied to property only upon an application by individual property owners to rezone from existing A-1-10 zoning.”

"8.6.1 School Sites

Prior to consideration of any application for rezoning or application for approval of any permit to increase density for property, any portion of which is designated as a school site, purchase agreements (each fully executed by the relevant owner and Poway Unified School District) shall be delivered to the City. These purchase agreements (described in Section 8.3.2 above) shall commit owners of designated school sites to sell those sites. The terms of the purchase agreements shall be negotiated between the relevant owner and School District, however, the purchase amount shall not exceed the amount set forth in the School Facilities Financing Plan and the acquisition dates shall be no sooner than when the acquisition funding is provided for in the School Facilities Financing Plan.”

B. Mitigation Measures

The Final Environmental Impact Report (EIR) for the Torrey Highlands Subarea Plan Project contains the following Mitigation Measure IV-L.1 with respect to school facilities.

"No approval of an application for rezoning or approval of any permit to increase density of entitlement shall be granted prior to (i) inclusion of a School Facilities Financing Master Plan as Appendix A of the Subarea Plan, which ensures full mitigation of impacts to Poway Unified School District (PUSD) through the provision of facilities concurrent with the need therefore, and (ii) execution of a school mitigation agreement between PUSD and the applicant seeking approvals, or written confirmation from PUSD that the applicant has satisfactorily provided for mitigation of school impacts with then applicable PUSD policies and (iii) for those applicants who own property any portion of which is designated as a school site, the execution of a school site purchase agreement consistent with Subarea Plan Section 8.6.1, between PUSD and the applicant, or written confirmation from PUSD that applicant has satisfactorily provided for the transfer of such school site property to PUSD."

C. Phase Shift Ordinance

Finally, the Phase Shift ordinance submitted to, and subsequently approved by the electorate on November 5, 1996 (Ordinance No. 0-18333), contains the following provisions with respect to schools.

"The People of The City of San Diego hereby further ordain that the City shall not approve any application for the rezoning of property or approve any permit applications to increase density entitlements for those properties within the area identified in Figure 1-2 in the Torrey Highlands Subarea IV Plan unless and until the Owner/Applicant of such land executes a School Facilities Funding and Mitigation Agreement, which is substantially similar in form and substance to the form of agreement set forth in Appendix A of the Torrey Highlands Subarea IV Plan.

The People of The City of San Diego further ordain that the City shall not approve any application for the rezoning of property or approve any permit applications to increase density entitlements for those properties designated as school sites in the Torrey Highlands Subarea IV Plan, unless the Poway Unified School District Board determines that such school site is no longer needed."

5. Summary of School Facilities Provisions

In summary, the School Facilities Provisions of the Subarea Plan Approval Resolution, Subarea Plan text, the EIR and Phase Shift Ordinance provide that all impacts of development of the Torrey Highlands portion of Subarea IV on the facilities needs of the Poway Unified School District shall be fully mitigated pursuant to this Schools Financing Plan and the Mitigation Agreement through the formation by the School District of a Community Facilities District (CFD) pursuant to the Mello-Roos Community Facilities Act of 1982 or compliance with the other provisions of the Mitigation Agreement. Any owner of property within the Subarea Plan who seeks a zone change must enter into the Mitigation Agreement and

participate in the CFD prior to City Council consideration of the zone change. Effectiveness of the Subarea Plan is deferred until the owners of 80 percent of the acreage within the Torrey Highlands Subarea Plan have approved the School Financing Plan by executing the Mitigation Agreement with the School District. In addition, any owner of any land designated in the Subarea Plan for school site purposes must enter into a school site transfer agreement with the School District (if they have not already done so) before the City Council will consider a zone change for any portion of that owner's property within the Subarea Plan. Any owner who seeks a building permit prior to the inclusion of their property in the CFD or entry into the Mitigation Agreement shall pay to the School District the amounts for each attached or detached residential units required by the School Mitigation Condition of Subarea Plan Section 8.3.3.

6. Estimated New School Facilities Dollar Impact

The projected cost of new school facilities is based on State School Building Standards and District Board of Education policies. These cost projections are developed in accordance with standard practices and procedures used by the School District and have been extensively reviewed by the Applicant and its consultants. See Exhibit B of the Mitigation Agreement for a summary of school facilities costs. Detailed construction cost estimates are maintained by the School District's planning staff as part of the Districtwide Master Plan.

Construction cost estimates will be adjusted annually to reflect increases in the State's school construction cost index. The School District also adjusts its estimates from time to time to reflect cost increases or decreases caused by changes in School District educational programs and state statutes. For example, recent state-mandated class size reductions have caused a slight increase in costs for additional classrooms in Grades 1-3. However, because this Schools Financing Plan will be implemented through the payment of fixed mitigation payments or special taxes that cannot practicably be increased, such cost increases will be funded, if at all, out of cost savings, if any, achieved in the actual cost versus estimated costs of school facilities. The School District will periodically review these factors and any net cost savings will be passed along to Schools Financing Plan participants in the form of reduced mitigation payments and special taxes.

The School District includes the cost of interim housing and administrative school facilities impacts for its Future Development Area students. Additional classrooms will be needed to temporarily house students until the enrollment thresholds are met and permanent facilities are constructed. Over the 12-15 year period in which Subarea IV is being developed, an estimated total of \$1,930,236 in 1996 dollars is projected to be needed to pay for temporary school facilities. As for administrative facilities, the School District is projecting an impact of \$997,360.

7. Land Acquisition Goals

Notwithstanding the stated goal of early school site acquisitions in order to generate cost savings, the School District was unable to complete any Transfer Agreements prior to consideration of the Subarea Plan by the City Council. Therefore, the Subarea Plan included text in Section 8.6.1 that required an owner of property that includes any portion of a designated school site to choose between (i) foregoing the benefits of Subarea Plan and Phase Shift approvals by developing his property at the existing A-1-10 zoning density, or (ii) accepting the benefits of the Subarea Plan and Phase Shift by entering into a Transfer Agreement for the sale of that site to the School District at a date not earlier than acquisition funding is provided for in the Schools Financing Plan and at a price not greater than the land cost assumption used in constructing the Schools Financing Plan. This does two things. First, it provides some assurance that the designated school sites will be available for that purpose at a time and price that is included in the sizing of the Schools Financing Plan. Second, this provision does not prevent earlier acquisition at a price that is less than the land cost assumption included in this Schools Financing Plan, thus leaving open the possibility of generating cost savings. Any such cost savings achieved, net of any cost increases, will be used to decrease the mitigation payments and special taxes charged to participants in the Schools Financing Plan.

Because the School District had no Transfer Agreements in hand at the time of Subarea Plan approval, it is necessary to make conservative land cost assumptions that would provide adequate funding for acquisition of all necessary interests in land at a much later date determined by enrollment thresholds. At the time of Subarea Plan approval, the School District assumed a school site land cost of \$265,000 per acre (as increased each year by an index until the year of acquisition) and a “one-for-one” mitigation land requirement (one acre of mitigation for one acre of disturbance) at an assumed cost of \$60,000 per mitigation acre increased each year by an index. These conservative land cost assumptions cause correspondingly high total “Mitigation Payments” required of each Detached Unit and Attached Unit and corresponding special taxes contemplated to be imposed by the CFD that are now shown in the Mitigation Agreement attached as Exhibit 1 to this Schools Financing Plan.

8. Land Cost Assumptions

Since approval of the Subarea Plan the School District has continued to refine the land cost assumptions by working with the City and resource agencies with respect to mitigation land costs and by gathering further information regarding the expected cost of school sites. Based on those efforts, the School District is hereby reducing the cost assumptions of this Schools Financing Plan to:

- (i) a school site land cost assumption of \$162,500 per acre; and
- (ii) environmental mitigation at one acre of mitigation for each acre of school site at a cost of \$30,000 per acre.

These above land cost assumptions are “the amount set forth in the School Facilities Financing Plan” for the purpose of Subarea Plan Section 8.6.1. These land cost assumptions of this Schools Financing Plan may be further reduced by the School District in response to actual cost savings that may be achieved.

9. Revised Mitigation Payment and Special Tax Amounts

Based on the above reduced land cost assumptions the School District is hereby reducing the mitigation payment and special tax amounts in the Mitigation Agreement and this Schools Financing Plan to the following amounts.

Detached Unit—Mitigation Amount	16,247
Attached Unit—Mitigation Amount	6,960
Annual Special Tax Per Detached Unit	1,565
Annual Special Tax Per Attached Unit	645
Maximum Annual Special Tax Per Undeveloped Acre	0

The above amounts are expressed in January 1, 1996 dollars and are subject to increase by an index as provided in the Mitigation Agreement.

10. Future Implementing Actions

The School District will commence formation of the Torrey Highlands community facilities district (CFD) in the near future. It is intended that the CFD formation will involve the entire land area of Torrey Highlands. In addition, the School District will continue efforts to complete, or enter into agreements to complete, land acquisitions to generate further cost savings.

EXHIBIT 1

MITIGATION AGREEMENT

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

**Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Attn: Thomas A. May, Esq.**

**SUBAREA IV
TORREY HIGHLANDS**

SCHOOL IMPACT MITIGATION AGREEMENT

Between

POWAY UNIFIED SCHOOL DISTRICT

and

TORREY HIGHLANDS LANDOWNERS

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**SUBAREA IV
TORREY HIGHLANDS
SCHOOL IMPACT MITIGATION AGREEMENT**

THIS SUBAREA IV TORREY HIGHLANDS SCHOOL IMPACT MITIGATION AGREEMENT (the "Agreement") is made and entered into as of July 1, 1996, by and between the POWAY UNIFIED SCHOOL DISTRICT ("District") and each owner of real property who enters into this Agreement by executing a Schedule "1" hereto (individually, an "Owner" and collectively, the "Torrey Highlands Landowners").

RECITALS

- A. Approximately 1,520 acres of real property commonly known as "Subarea IV" (the "Subarea IV Property") is identified in the Framework Plan for the North City Future Urbanizing Area, February 1995, as amended (the "Framework Plan") of the City of San Diego (the "City").
- B. The Subarea IV Property is composed of (1) the 386-acre Fairbanks Highlands property owned by Koll/Signal Landmark, which processed a map under (a) the A-1-10 Zone, Planned Residential Development (PRD) Ordinance of the City and (b) City Council Policy 600-29, which map was adopted by the City Council of the City in December 1995 and, (2) the approximately 1,134 acre remainder of Subarea IV known as "Torrey Highlands" that will be the subject of the "phase shift" vote in November 1996 (herein, the "Torrey Highlands Property") as depicted and more particularly described in Exhibit "A" hereto.
- C. The Torrey Highlands Property is proposed to be developed as described in the Torrey Highlands Subarea Plan, dated July 19, 1996 as approved by the City Council of the City (the "Subarea Plan"). The Subarea Plan provides for development of up to 2,600 dwelling units in Torrey Highlands, and related uses including development of elementary, middle and high schools on sites identified in the Subarea Plan together with park sites and land for open space and other uses (collectively, the "Project").
- D. The Framework Plan which comprises a portion of the Progress Guide and General Plan ("General Plan") of the City requires that no Subarea Plan will be adopted by the City in the absence of agreements with relevant school districts regarding the acquisition of designated school sites and the location, phasing and financing of school facilities necessary to mitigate impacts of development on the need for schools (see Framework Plan Sections 8.2c and 8.3f).
- E. Each Owner has entered into this Agreement by executing Schedule "1" hereto with respect to such Owner's undeveloped property described therein. Certain of the Owners have each entered into a School Site Transfer Agreement and Escrow Instructions ("Transfer Agreement") whereby such Owner will transfer to District all or a portion of the elementary school, middle school and high school sites identified in the Subarea Plan and as further identified in Schedule "2" hereto.

- F. This Agreement and the related Transfer Agreements, which have been executed prior to the date of Subarea Plan approval by the City as required by the Framework Plan, are intended to provide the funds necessary for the construction and acquisition of specified school facilities and acquisition of land therefor and appurtenances thereto necessary to mitigate the impacts on the need for school facilities that will be caused by the development of the Project.
- G. This Agreement and each of the Transfer Agreements are integral components of the School Facilities and Financing Plan set forth as Appendix “D” to the Subarea Plan.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals and the terms and conditions herein set forth, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, District and each Owner do hereby agree as follows:

ARTICLE I

STATUTORY AUTHORITY AND DEFINITIONS

Section 1.1 Authority for this Agreement. This Agreement is entered into consistent with and under the provisions of Section 53080 *et seq.*, Chapter 4.7 (commencing with Section 65970) and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code and Part 23 (commencing with Section 39001) of the Education Code and other provisions of law.

Section 1.2 Incorporated Definitions. Capitalized terms not otherwise defined herein shall be defined as provided in the Rate & Method.

Section 1.3 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this agreement, or for any supplemental agreement, and for any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the word “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

“**Act**” means the Mello-Roos Community Facilities Act of 1982, as amended, located at Section 53311 *et seq.* of the California Government Code.

“**Agreement**” means this Subarea IV Torrey Highlands School Impact Mitigation Agreement and all exhibits and schedules incorporated herein, as the same may be amended or supplemented from time to time.

“Attached Unit” means a building or buildings in which all of the individual Units have at least one common wall.

“Bonds” means any obligation to repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, which obligation may be incurred by the CFD or the District.

“Certificate of Compliance” means a certificate issued by District pursuant to Government Code Section 53080(b) or other applicable law substantially in the form of Exhibit “C” attached hereto and incorporated herein.

“CFD” means Community Facilities District No. 2 or other special tax district to be formed by the District pursuant to this Agreement.

“City” means the City of San Diego.

“City Council” means the City Council of the City.

“Detached Unit” means any residential dwelling Unit within the Project which contains a single-family structure with no common walls.

“District” means the Poway Unified School District and any successor or assignee involved in the delivery, funding or construction of school facilities or services in or to the District or to its students or to its employees, including any joint powers authority, public benefit corporation or other public entity engaged in such activities.

“Elementary School” means the elementary school facilities to be located on School Site No. 1.

“Final Map” means a final subdivision map creating individual lots on which dwelling Units may be constructed in accordance with the California Subdivision Map Act.

“High School” means the high school facilities to be located on School Site No. 6.

“Index” means the Lee Saylor Construction Cost Index for Class D Construction published by the State Allocation Board (the “Lee Saylor Index”), or in the absence of the Lee Saylor Index, the Engineering News Record, Construction Cost Index (Los Angeles Area) published by McGraw-Hill, Inc. (“ENR Index”), or in the absence of such ENR Index, an index which reasonably approximates increases in costs of school construction.

“Middle School” means the middle school facilities to be located on School Site No. 2.

“Mitigation Credit” means credits to be issued by District pursuant to a Transfer Agreement, substantially in the form attached as Exhibit “E” hereto.

“Mitigation Payment” means payment to or for the account of District in an amount equal to: (i) \$18,391 for each Detached Unit, or (ii) \$7,891 for each Attached Unit, subject in each case to the following adjustments. The Mitigation Payment amount shown above shall be increased, as of January 1 of each year commencing January 1, 1997 (each an “Adjustment Date”), by multiplying the applicable dollar amount in effect on such Adjustment Date by the percentage increase in the Index from the later of January 1, 1996, or the date of Index data used in the last adjustment, to date of the Index data most recently available prior to the Adjustment Date. Regardless of any change in the Index, in no event shall such applicable dollar amounts decrease.

“Owner” means any owner of land within the Torrey Highlands Property who has entered into this agreement by executing Schedule “1” hereto.

“Payor” is defined as provided in Section 2.4(b).

“Phase Shift” means approval by the electorate of the redesignation of Subarea IV from “Future Urbanizing” to “Planned Urbanizing” as contemplated by the Framework Plan and the Subarea Plan.

“Project” means the development on the Torrey Highlands Property in accordance with the Subarea Plan.

“Property” means the Torrey Highlands Property.

“Rate & Method” means the Rate & Method of Apportionment of Special Taxes attached as Exhibit “D” hereto.

“School Facilities” means the acquisition, construction and/or financing of those school facilities including classrooms, on-site office space at a school, central support and administrative facilities, interim housing, transportation and special education facilities, together with furniture, equipment and technology, needed by District in order to serve the student population to be generated as a result of the development of the Property, together with all land or interests in land required for the construction of such facilities and all land or interests in land required to be provided by the District as mitigation of environmental impacts associated with the development of such school facilities as well as costs to the District related to negotiation and execution of this Agreement and the Transfer Agreements.

“School Facilities Financing Plan” means the School Facilities Master Plan and Financing Plan of the North City Future Urbanizing Area, Subarea IV-Torrey Highlands, which is incorporated in the the Subarea Plan at Appendix A thereto. The form of this Agreement is attached to and is incorporated in the School Facilities Financing Plan.

“School Fees” means, other than the payments, special taxes and provisions required under this Agreement, any and all fees, interim fees, charges, taxes, special taxes, dedications or other forms of exactions or requirements which are imposed, as a condition of development of a project or by other means, for facilities or services of District and without limiting the

generality of the foregoing, including those school fees as authorized by Section 53080, Chapter 4.7 (commencing with Section 65970) and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or as may be authorized by any other existing or future legislation, ordinance, resolution or court decision.

“School Sites” means School Site No. 1, School Site No. 2 and School Site No. 6.

“School Site No. 1” means the site for the Elementary School located in the central portion of Subarea IV as identified in the Subarea Plan and further described in Schedule “2” hereto.

“School Site No. 2” means the site for the Middle School located at the northern edge of Subarea IV as identified in the Subarea Plan and further described in Schedule “2” hereto.

“School Site No. 6” means the site for the High School as identified in the Subarea Plan and further description in Schedule “2” hereto.

“Senior Citizen Housing” or **“Senior Unit”** means any residential dwelling unit within the Project designated as senior citizen housing, residential care facilities for the elderly or multi-level facilities for the elderly as described in California Government Code Section 65995.1 regardless of whether such residential dwelling unit is attached to or detached from other residential dwelling units.

“Subarea Plan” means the Torrey Highlands Subarea Plan, proposed to be approved by the City and the Draft Environmental Impact Report (SCH 93071041) and any amendments or implementing resolutions with respect thereto that do not increase the number of dwelling units or other development affecting the need for School Facilities planned for the Project.

“Tax Lien Date” means the date on which a Notice of Special Tax Lien (as defined in the Act) with respect to the Rate & Method is recorded pursuant to the Act.

“Torrey Highlands Property” or **“Property”** means the real property depicted and described on Exhibit “A” hereto.

“Transfer Agreement” means each of the School Site Transfer Agreement and Escrow Instructions being executed concurrently herewith by and between District the Owner designated therein (as shown in Schedule “2”), whereby such Owner will transfer all or a portion of the School Sites to District.

“Unit” means each separate residential dwelling unit which comprises an independent facility capable of conveyance separate from adjacent residential dwelling units. Each Unit shall be classified as either Detached Unit or Attached Unit.

ARTICLE II

MITIGATION MEASURES

Section 2.1 Mitigation. The purpose of this Agreement is to establish a method of providing School Facilities necessary to mitigate the impact of development of the Project on the District. Execution of this Agreement alone shall not be deemed mitigation of the impacts on District of development of the Project. Mitigation of school impacts shall be deemed to occur only upon satisfaction of the terms and conditions provided herein. The parties intend this Agreement to be binding upon each party and its successors, notwithstanding the provisions of any existing or future legislation, ordinance, resolution, regulation, policy or court decision (collectively and individually, any “law”) issued or adopted by any court, the State of California, any city, the County of San Diego or Local Agency Formation Commission, or subdivision thereof (collectively and individually, a “Governmental Unit”), which would require or authorize the payment of a School Fee or other school mitigation requirement contrary to those contemplated under this Agreement. In consideration of the covenants contained in this Agreement, both Owner and District expressly waive the benefit arising from any existing or future law issued or adopted by any Governmental Unit affecting the rights or obligation(s) of an owner, developer or user of real property, to mitigate the impact of development or use of real property upon the availability of School Facilities, or the rights or obligations of the District to impose School Fees.

After approval of the Phase Shift and provided that the CFD is formed and Owner is not in default under this agreement or a Transfer Agreement to which it is a party, then District shall not (i) oppose development of Owner’s portion of the Project or (ii) seek to impose any other forms of mitigation including, but not limited to, the imposition or collection of fees, dedication of land, the payment of money or other additional consideration from Owner or Owner’s successors who expressly assume Owner’s obligations under this Agreement, including, but not limited to, the imposition of any School Fees. The District reserves the right to oppose continued development of the Project during any period in which the school impact mitigation provisions of this Agreement are not being performed as required by this Agreement or any Transfer Agreement is not being performed as required therein. Upon request of any Owner, provided that such Owner is not then in default hereunder or under a Transfer Agreement to which it is a party, District shall submit to the City written confirmation that Owner has provided for mitigation of school impacts through entry into, and continued performance under, this Agreement and any Transfer Agreement to which such Owner is a party.

Section 2.2 District Confirmation of Framework Plan Compliance. The District has entered into this Agreement and the Transfer Agreements in an effort to (i) fully mitigate to a level of insignificance the anticipated impacts on the need for School Facilities that will be caused by the development of the Project, (ii) to assure the availability of the School Facilities for the student population generated by development of the Project as required by the General Plan and Framework Plan and requirements of the EIR, and (iii) to establish the basis for providing a letter to the City as required by Section 8.3f of the Framework Plan.

Subject to the provisions of Section 2.6(a) below, the District shall provide such confirmation to the City upon completion of each of the following requirements of Section 2.2(a) and (b), which shall be established to the satisfaction of the District at least twenty-four (24) hours prior to the date and time scheduled by the City Council of the City to act upon the Subarea Plan.

(a) *Mitigation Agreement.* Each owner of real property within the Torrey Highlands Property shall have entered into this Agreement by executing, acknowledging and delivering to the District an “Owner Signature Page” substantially in the form of Schedule “1” hereto.

This level of compliance with the Framework Plan (see Section 8.3f thereof) is necessary in order to assure a coherent financing plan for all School Facilities required by the development of the Project and to establish an equitable sharing among all Owners of the costs of School Facilities.

(b) *Transfer Agreements.* Framework Plan Section 8.2c requires that, prior to Subarea Plan approval by the City, each owner of real property that is designated by the Subarea Plan (see Figure 4-2 thereof) as containing any portion of a school site, shall have entered into a Transfer Agreement providing for the sale of such school site property to the District. It is expected that certain Owners will not have entered into a Transfer Agreement with respect to their portions of the designated School Sites by the time that the City Council considers the Subarea Plan.

Provided that the Subarea Plan is amended by the City Council to contain language that prohibits approval of future zoning applications for density higher than the current A-1-10 zoning until such time as the owner of land designated for school site purposes enters into a Transfer Agreement with the District in conformance with Framework Plan Section 8.2c., then the absence of Transfer Agreements with respect to school sites designated in the Subarea Plan will have an insignificant effect on the mitigation of impacts on schools, and the District shall so confirm to the City.

Section 2.3 Development Conditions. The existence of this Agreement and the continuing obligation of each Owner to comply with the provisions of this Agreement shall be inserted as a condition to approval of the Subarea Plan and any subsequent zoning decision, tentative map, final map or other entitlement approval for the Project or any portion thereof and in any development agreement between an Owner and the City. District and Owner agree that the following condition shall be used:

“All impacts of development of the Torrey Highlands portion of Subarea IV (the “Project”) on the facilities needs of the Poway Unified School District (the “District”) shall be fully mitigated. Prior to or concurrent with approval of the Torrey Highlands Subarea Plan (the “Subarea Plan”), the District has entered into a School Impact Mitigation Agreement dated as of July 1, 1996 (the “Mitigation Agreement”) with each of the Owners identified therein setting forth the terms and methods of fully mitigating impacts of development of the Project on the District through the formation by the District of a community facilities district (“CFD”) pursuant to the Mello-Roos Community Facilities Act of 1982. Any owner of

property within the Subarea Plan who seeks a building permit prior to the inclusion of their property in the CFD shall pay to the District the following amounts for each attached or detached residential unit.

\$18,391 Detached Residential Unit

\$7,891 Attached Residential Unit

The amounts shall be increased, as of January 1 of each year, commencing January 1, 1997 by the percentage change in the "Index," and in the manner provided in the Mitigation Agreement. Such impacts will be fully mitigated only if the Mitigation Agreement is fully performed. Therefore, continued performance under the Mitigation Agreement shall be a condition to the approval by the City of San Diego ("City") of any future zoning decision, tentative map, subdivision map, building permit, or other entitlement approval for the Project or any portion thereof (collectively, "Development Permit"). Within ten (10) days following written request delivered to District by the City or any applicant, subject to holidays and delays beyond the reasonable control of the District, the District shall submit to the City, with a copy to any Development Permit applicant requesting same, a certificate indicating the status of the continued performance of the Mitigation Agreement."

Section 2.4 Mitigation Payments.

(a) *Payments. (i) Prior to Tax Lien Date.* On or prior to the issuance of each building permit for construction of a Unit within the Project, Payor shall pay to District the Mitigation Payment in the then applicable amount with respect to each type of dwelling Unit.

(ii) *After Tax Lien Date.* From and after the Tax Lien Date, the Special Taxes provided by the Rate & Method shall be collected in lieu of the Mitigation Payment otherwise required under this Section 2.4.

(b) *Payment Responsibility.* The Owner, person or entity owning a parcel for which a building permit is sought (the "Payor") shall pay the Mitigation Payment in the then applicable amount to the District prior to issuance of each building permit for each Detached Unit and for each Attached Unit. Payor shall promptly deliver to District a copy of each building permit for each residential structure with respect to which a Mitigation Payment has been paid to the District. Upon receipt of a Mitigation Payment, District shall provide a Certificate of Compliance (substantially in the form of Exhibit "C" hereto) with respect to such Unit as provided in Section 2.5 below.

Section 2.5 Certificates of Compliance. No building permit for the Project shall be issued without first obtaining a Certificate of Compliance. For any property subject to this Agreement or the Rate & Method, the District shall issue, upon request, a Certificate of Compliance for any Detached Unit or Attached Unit within the Property, subject to the express condition precedent that Payor has paid either (i) all Mitigation Payments then due hereunder or, (ii) alternatively, the One-Time Special Tax provided by the Rate & Method, with respect to such Unit.

Section 2.6 Conditions Subsequent.

(a) *Termination By Owner.* This Agreement shall terminate and be of no further force or effect by delivering written notice of termination to District if (i) the Subarea Plan is not approved by the City on or before December 31, 1996, or (ii) the “Phase Shift” is not approved by the electorate at the election designated for that purpose by the City.

(b) *Termination By District.* If the provisions of Section 2.2(a) and (b) above are not complied with at least twenty-four (24) hours prior to the date and time scheduled for City Council consideration of the Subarea Plan may terminate this Agreement by written notice to the Owners if the Subarea Plan is not approved, the District or language acceptable to the District is not included in the Subarea Plan to require compliance at some later date with the provisions of Framework Plan Sections 8.2c and 8.3f and Subarea Plan Section 8.6.1.

ARTICLE III

COMMUNITY FACILITIES DISTRICT

Section 3.1 CFD Formation. Each Owner shall cooperate with District in forming the CFD pursuant to the Act as soon as practicable after voter approval of the Phase Shift but in no event later than the approval of any tentative map, parcel map or similar proceedings, and each Owner agrees to vote in favor of a special tax in the form of the Rate & Method as set forth in Exhibit “D” hereto and further agrees to execute all documents reasonably requested by the District and required for the formation of the CFD.

From and after the Tax Lien Date, the Special Taxes provided by the Rate & Method shall be collected in lieu of the Mitigation Payments otherwise required under Section 2.4 hereof.

Notwithstanding anything to the contrary contained herein or in the Rate & Method, prior to the Tax Lien Date, in the event of disagreement between this Agreement and the Rate & Method, the terms of this Agreement shall control. After the Tax Lien Date, the Rate & Method as recorded shall control.

Section 3.2 CFD Boundaries. The boundaries of the CFD shall include the properties of each Owner and such other portions of the Torrey Highlands Property as the District may reasonably determine to include and provided further that the CFD may include or annex additional land (either within or without Subarea IV) in accordance with the provisions of the Act.

Section 3.3 CFD Special Taxes. The CFD shall not levy or collect any special taxes except those set forth in the Rate & Method. All funds generated from the levy of special taxes pursuant to the Rate & Method shall be expended as reasonably determined by the District for School Facilities.

Section 3.4 Bonds.

(a) *Construction of Facilities.* The CFD shall issue Bonds to provide funds to construct the School Facilities. Bonds may be incrementally sold from time to time, in a manner consistent with sound public financing practices, when needed to provide funding for School Facilities at the phasing thresholds provided in the Framework Plan (Table 8.3C) with respect

to the construction of School Facilities and provided that the District may cause the CFD to issue Bonds for the acquisition of land without respect to such phasing thresholds.

(b) *Acquisition of Land.* The CFD shall issue Bonds and Mitigation Credits to acquire land (including school site and environmental mitigation land) pursuant to the Transfer Agreements. The District and Owners acknowledge that Framework Plan Section 8.2c provides that:

“No subarea plan will be approved without concurrent entry into school site purchase agreements at a price (that is equal to the market value of the site(s) based on uses allowed by zoning regulations in place prior to the time the subarea plan is adopted, plus interest paid at an agreed-upon rate from the date of the Agreement to the date of actual purchase,”

and further that Subarea Plan Section 8.6.1 provides that:

“Prior to or concurrent with the adoption of the Subarea Plan, purchase agreements (each fully executed by the relevant owner and Poway Unified School District) shall be delivered to the City. These purchase agreements shall commit owners of designated school sites to sell those sites to School District and commit the School District to buy those sites. The terms of the purchase agreement shall be negotiated between the relevant owner and School District, however, the purchase amount shall not exceed the amount set forth in the School Facilities Financing Plan and the acquisition date shall be no sooner than when the acquisition funding is provided for in the School Facilities Financing Plan.”

Notwithstanding the above Framework Plan and Subarea Plan requirements, in the course of discussions among the District and the various Owners it was recognized that the owners of designated school sites (i) wished to sell their land at earlier dates, (ii) wish to sell their land at prices unrelated to the existing A-1-10 zoning, and (iii) that the reduced land cost attributable to such early acquisitions would benefit other Owners and participants in the CFD by reducing the total cost of School Facilities. The District has been willing to consider deviating from the above requirements of the Framework Plan and Subarea Plan in order to accommodate these apparently mutual interests of school site owners and all participants in the CFD who must contribute their allocable share to land acquisition costs for School Facilities, provided that such accommodation results in a School Facilities Financing Plan (including execution and delivery of necessary Transfer Agreements and this Agreement) that provides reasonable certainty that the necessary land can be acquired at a cost not exceeding the land cost assumptions used in the School Facilities Financing Plan for the purpose of formulating the Mitigation Payment amounts and related Special Tax amounts required by this Agreement. Unfortunately, as of the date this Agreement was circulated for signature by Owners, all necessary Transfer Agreements had not been executed and it is not expected that such Transfer Agreements will be delivered to the District before the City Council is scheduled to consider the Subarea Plan on July 30, 1996. Therefore, it has been necessary for the District (i) to consider opposing City Council approval of the Subarea Plan and opposing the subsequent voter approval of the proposed “phase shift,” or (ii) to assume

that the City Council will amend the Subarea Plan text in a manner so as to require that (a) any owner of land designated as a school site who has not previously entered into a Transfer Agreement with the District shall be required to comply with Subarea Plan Section 8.6.1 before any application for a change in zoning from the current A-1-10 zoning shall be considered by the City Council, and (b) any owner of land who has not previously entered into this Agreement with the District shall be required to provide for a full mitigation of impacts on the need for school facilities by entering into this Agreement or agreeing to the condition provided in Section 2.3 of this Agreement before any application for a change in zoning from the current A-1-10 zoning shall be considered by the City Council, or (c) otherwise provide that the requirements of Framework Plan Sections 8.2c and 8.3f and Subarea Plan Section 8.6.1 will be complied with at some point after City Council approval of the Subarea Plan in a manner so as to assure full mitigation of impacts of development pursuant to the Subarea Plan on the need for School Facilities to accommodate students expected to be generated by such development.

In the absence of compliance with the above Framework Plan and Subarea Plan requirements, in formulating a School Facilities Financing Plan it has been necessary for the District to assume that school sites will not be acquired earlier than necessary to allow construction of required school facilities to occur at the enrollment thresholds specified in the Framework Plan and that the school sites will be acquired at then current fair market value. For that purpose, in formulating the School Facilities Financing Plan, the District has relied on a recent appraisal for school site acquisition at \$265,000 per acre. This set of necessary assumptions has produced the following Mitigation Payment and Special Tax Amounts that, in the absence of changed circumstances, will be implemented pursuant to this Agreement.

\$18,391	Mitigation Payment—Detached Unit
\$7,891	Mitigation Payment—Attached Unit
\$1,875	Annual Special Tax Per Detached Unit
\$772	Annual Special Tax Per Attached Unit
\$0.00	Expected Special Tax Per Undeveloped Acre
\$100	Maximum Annual Special Tax Per Undeveloped Acre
\$7,891	Gross pre-payment Amount Per Attached Unit
\$18,391	Gross pre-payment Amount Per Detached Unit

The District believes these costs could be significantly reduced if the cooperative school facilities planning effort contemplated by the Framework Plan were fully implemented. However, until land acquisition costs necessary for the required School Facilities can be fixed at reduced levels, it will be necessary to implement the School Facilities Financing Plan as provided in this Agreement.

Section 3.5 Mitigation Credits. Owner acknowledges and agrees that pursuant to the Transfer Agreements the District may issue Mitigation Credits to the sellers of any portion of the School Sites in an amount equal to the amount by which the total consideration to be paid for such School Site exceeds the subsequently determined appraised value of such School Site.

Section 3.6 Priority Attendance. Subject to District policy and applicable law (including, without limitation, Government Code §53312.7(b)), and other limitations imposed by law, as such law may be amended from time to time, students residing in the Project shall enjoy priority attendance access at the Elementary School, the Middle School and the High School.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1 Successors. Subject to the restrictions of Section 4.2 below, all of the covenants, stipulations, promises, and agreements contained in this Agreement by or on behalf of, or for the benefit of, any of the parties hereto, shall bind and inure to the benefit of the successors of the respective parties.

Section 4.2 Assignment. No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or part of the Property. Any Owner may assign to any person or entity all or a portion of such Owner's rights and obligations under this Agreement with respect to the portion of the Property transferred or assigned, provided that the proposed assignee assumes in writing all executory obligations of Owner with respect to the rights assigned and a copy of such fully executed assumption is delivered to the District (a "Permitted Assignment"). The assignee of a Permitted Assignment shall not require the prior written consent of District provided that the form of the assignee's assumption of obligations under this Agreement is substantially in the form of the Assignment and Assumption Agreement attached as Exhibit "F" hereto. No assignment by Owner, shall release Owner from its obligations under this Agreement or change Owners primary liability to make payments to District and to perform all other obligations of Owner under this Agreement unless and until such Assignment and Assumption is delivered to District and District executes the consent and release provided that Owner is not in breach of any of its obligations under this Agreement and that the Assignment and Assumption is fully executed and acknowledged by both the "Assignor" and the "Assignee" designated therein. District's acceptance of any payments or performance by any other person shall not constitute a waiver of any provision of this Agreement. In the absence of a release executed by District, if any assignee of Owner defaults under this Agreement, District may proceed directly against Owner without pursuing remedies against the assignee.

Section 4.3 Amendment and Waiver. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors. All waivers of this Agreement must be in writing and signed by the appropriate authorities of the parties hereto.

Section 4.4 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining portions hereof shall not, in any way, be affected or impaired thereby.

Section 4.5 Integration. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of the Transfer Agreement or any instruments executed by the parties in the form of the exhibits attached to this Agreement.

Section 4.6 Notices, Demands and Communication. Formal notices, demands and communications between District and Owner hereunder shall be sufficiently given if mailed by registered or certified mail, postage prepaid, return receipt requested, to the principal

offices of District or Owner, as set forth below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail, as provided in this Section. Such notices, etc., shall be deemed received upon delivery if personally served, three (3) business days after sending by registered or certified mail, return receipt requested or one (1) business day after sending by Federal Express or other nationally recognized overnight delivery service.

If to Owner: At the addresses set forth in each Schedule "1" hereto

If to District: Poway Unified School District
13626 Twin Peaks Road Poway, CA 92064
Attn: Albert J. Abbott, Assistant Superintendent,
Business Support Services

With a copy to: Thomas A May, Esq.
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, CA 92101

Section 4.7 Attorneys' Fees. In any action between Owner and District arising out of or relating to the breach, enforcement or interpretation of this Agreement, the prevailing party in such litigation, in addition to any other relief which may be granted whether legal or equitable, shall be entitled to recover reasonable attorneys' fees and all other reasonable costs incurred in such litigation and allowed by the court.

Section 4.8 Interpretation. The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

Section 4.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 4.10 Recordation; Limited Termination. The parties shall execute, acknowledge and cause this Agreement to be recorded against the Property in the Official Records of San Diego County. Following the Tax Lien Date, District shall execute and acknowledge a quit claim instrument or such other instrument reasonably requested by any Owner in recordable form terminating the encumbrance of this Agreement recorded in the Official Records of San Diego County, California ("Official Records").

Section 4.11 Nature of Mitigation Payments. The parties acknowledge and agree that the amounts payable by Owner to District hereunder do not constitute a "fee" for purposes of California Government Code Section 66000 *et seq.* and none of those provisions shall be applicable to this Agreement. Rather, this Agreement has been entered into as mutually satisfactory settlement of disputes between the parties and potential litigation arising therefrom.

Section 4.12 Exhibits and Schedules. The following Exhibits and Schedules attached to this Agreement are incorporated herein as though fully set forth:

Schedule	“1”	Signature Pages of Owners
Schedule	“2”	School Site Information
Exhibit	“A”	Map and Legal Description of Torrey Highlands Property
Exhibit	“B”	Facilities Description and Cost Summary
Exhibit	“C”	Form of Certificate of Compliance
Exhibit	“D”	Rate & Method of Apportionment of Special Tax
Exhibit	“E”	Form of Mitigation Credit
Exhibit	“F”	Form of Assignment and Assumption Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

POWAY UNIFIED SCHOOL DISTRICT

By: _____
Albert J. Abbott, Assistant Superintendent,
Business Support Services

APPROVED AS TO FORM:

LUCE, FORWARD, HAMILTON & SCRIPPS LLP
Legal Counsel
Poway Unified School District

By: _____
Thomas A. May,
Partner

“OWNER”

By: _____
See Schedule 1 for the execution by
each Owner of this Agreement

SCHEDULE "1"

OWNER SIGNATURE PAGE

By execution of this Schedule "1" the undersigned ("Owner") enters into that certain Subarea IV Torrey Highlands School Impact Mitigation Agreement, dated as of July 1, 1996 (the "Mitigation Agreement") and represents and warrants that the following information regarding Owner and its real property is true and correct to the best of our knowledge.

1. Owner's Name & Address: _____

Phone: _____
Fax: _____

2. Owner's Property Within Torrey Highlands Subarea Plan

A. Legal Description: See attached exhibit

B.	<u>APN</u>	<u>Acres</u>
	_____	_____
	_____	_____
	_____	_____
	_____	_____
		_____ Total Acres

"OWNER"

By: _____
Its: _____

SCHEDULE "2"

PROPERTY OWNER INFORMATION

School Site No. 1: Subarea IV Elementary School

Property Owner	APN	Address/Phone	PUSD No. & Legal Description	Acreage Parcel Total
Kirwin/Mundy/ KMC-11	306-011-09	Contact: Pete Mundy and Bill Kirwin P.O. Box 334 Three Forks, MT 59752 (406) 285-3947 (FAX)	ES 1	11/(Total Parcel)
	306-051-06		ES 2	
	306-051-09			

School Site No. 2: Subarea IV Middle School

Property Owner	APN	Address/Phone	PUSD No. & Legal Description	Acreage Parcel Total
Ta C.H. Li	306-030-05	4040 Moraga Avenue San Diego, CA 92117 (619) 273-3339	MS 1	0.51?
Koll/Signal Landmark	306-011-11, 12 306-020-11, 12	Holly Cloud 1656 Cloverdale Road Escondido, CA 92027 (619) 740-9537	MS 2	101?

School Site No. 6: Subarea IV High School

Property Owner	APN	Address/Phone	PUSD No. & Legal Description	Acreage Parcel Total
Pardee Construction Co.	306-021-05	Contact: David Poole 101 West C Street Suite 2200 San Diego, CA 92101 (619) 525-7240	HS 1	43.6/80
Black Mountain Road Partnership	306-021-07	Contact: Janet Raschke 4950 Ladera Sarina Del Mar, CA 92014 (619) 481-0455	HS 2	10.6/29
Black Mountain Road Partnership II	306-021-06	Contact: Janet Raschke 4950 Ladera Sarina Del Mar, CA 92014 (619) 481-0455	HS 3	10.7/29
Chow/Wonder Properties	306-041-06 306-041-19 306-041-20 306-041-21	Contact: Cindy Kasai 8333 Clairmont Mesa Boulevard #210 San Diego, CA 92111 (619) 457-2494	HS 4	1.1/109.1

EXHIBIT "A"

Map and Legal Description of Torrey Highlands Property

(To be provided by David Goodell)

EXHIBIT "B"

School Facilities Description and Cost Summary

**POWAY UNIFIED SCHOOL DISTRICT
SCHOOL FACILITIES IMPACT CALCULATION
FOR SUBAREA IV OF THE NCFUA LAND COSTS
AT \$265,000 PER ACRE**

I. SCHOOL FACILITIES COSTS

School Level	Site Acquisition	Environmental Mitigation	Facility Construction	Total Cost
Elementary (701)	\$2,915,000	\$720,000	\$7,841,210	\$11,476,210
Middle (1,380)	\$7,950,000	\$1,200,000	\$19,236,442	\$28,386,442
High (2,140)	\$17,304,500	\$4,320,000	\$43,123,847	\$64,748,347

II. STUDENT GENERATION FACTORS

Land Use	Elementary School	Middle School	High School	Total SCF
Detached	0.340	0.180	0.260	0.780
Attached	0.175	0.070	0.100	0.345

III. NUMBER OF PROPOSED RESIDENTIAL UNITS

Land Use	Units
Detached	2,122
Attached	478
Total Units	2,600

IV. PROJECTED STUDENT ENROLLMENT

Land Use	Elementary School	Middle School	High School	Total Enrollment
Detached	721	382	552	1,655
Attached	84	33	48	165
Total Enrollment	805	415	600	1,820

V. ESTIMATED SCHOOL FACILITIES IMPACT

Land Use	Elementary School	Middle School	High School	Total Impact
Detached	\$11,803,634	\$7,857,696	\$16,701,443	\$36,362,733
Attached	\$1,375,181	\$678,806	\$1,452,299	\$3,506,286
Total Enrollment	\$13,178,815	\$8,536,502	\$18,153,742	\$39,869,059

VI. ESTIMATED SCHOOL FACILITIES IMPACT PER UNIT

Land Use	Elementary School	Middle School	High School Per Unit
Detached	\$5,563	\$3,703	\$7,871
Attached	\$2,877	\$1,420	\$3,038

VII. ESTIMATED INTERIM AND ADMINISTRATIVE SCHOOL FACILITIES IMPACT

Item	Relocatables/ Students	Item Cost	Total Impact
Interim	308	\$6,267	\$1,930,236
Administrative	1,820	\$548	\$997,360

VIII. ESTIMATED INTERIM AND ADMINISTRATIVE SCHOOL FACILITIES IMPACT PER UNIT

Land Use	Students	Interim Impact	Administrative Impact	Interim Per Unit	Administrative Per Unit
Detached	1,655	\$1,755,242	\$906,940	\$827	\$427
Attached	165	\$174,994	\$90,420	\$366	\$189
Total	1,820	\$1,930,236	\$997,360	NA	NA

IX. TOTAL ESTIMATED IMPACT PER UNIT

Item	Detached	Attached
Elementary	\$5,563	\$2,877
Middle	\$3,703	\$1,420
High	\$7,871	\$3,038
Interim	\$827	\$366
Administrative	\$427	\$189
Total	\$18,391	\$7,891

**POWAY UNIFIED SCHOOL DISTRICT
SUMMARY OF ESTIMATED COSTS - ELEMENTARY SCHOOL
CITY FUTURE URBANIZING AREA - SUBAREA IV
LAND COST AT \$265,000 PER ACRE**

A. SITE		
1. Purchase Price of Property (11 acres [10 net usable] @ \$265,000 per acre)	\$2,915,000	
2. Environmental Mitigation Contingency Fund (12 acres @ \$60,000 per acre)	\$720,000	
3. Appraisals	\$7,000	
4. Escrow/Title	\$3,000	
5. Surveys	\$4,000	
6. EIR	\$10,000	
7. Other (Legal)	\$4,000	
Site Subtotal		\$3,663,000
B. PLANS		
1. Architect's Fee	\$473,774	
2. Preliminary Tests	\$20,000	
3. DSA/SDE Plan Check	\$20,000	
4. Energy Analysis Fee	\$15,000	
5. Other	\$5,000	
Plans Subtotal		\$533,774
C. CONSTRUCTION (See Construction Cost Allowance Worksheet)	\$4,160,323	
1. Utility Services	\$200,000	
2. Off-Site Development	\$200,000	
3. Service-Site Development (\$67,000 per acre x 12)	\$804,000	
4. General Site Development	\$544,000	
5. Technology (5% of Construction)	\$208,016	
6. Unconventional Energy	\$259,000	
Construction Subtotal		\$6,375,339
D. TESTS		\$60,000
E. INSPECTION		\$90,000
F. FURNITURE & EQUIPMENT		\$294,927
(\$5 x 43,198 = \$215,990) + (\$10 x 1,080 = \$10,800) + Cost Index Factor of 1.30		
Total Items A-F		\$11,016,940
G. CONTINGENCIES		\$167,254
H. ITEMS NOT FUNDED BY OFFICE OF PUBLIC SCHOOL CONSTRUCTION		\$292,016
I. TOTAL ESTIMATED COST		\$11,476,210

***ADDITIONAL PROJECT COSTS**

Technology F&E @ additional 5% of construction	\$208,016
Library books (8 books/student @ \$15)	\$84,000
TOTAL COSTS NOT FUNDED BY OFFICE OF PUBLIC SCHOOL CONSTRUCTION	\$292,016

Note: The service site development cost was determined using figures from Adobe Bluffs Elementary School. In 1989 the site was appraised at the following values:

Finished:	\$1,400,000
Unfinished:	\$815,000

The difference, \$585,000, was divided by the site acreage (12.7) to arrive at a per acre improvement cost of \$48,750. This amount was inflated at the rate of 4% per year for 8 years to arrive at the current cost of \$67,000 per acre.

**POWAY UNIFIED SCHOOL DISTRICT
SUMMARY OF ESTIMATED COSTS - MIDDLE SCHOOL
CITY FUTURE URBANIZING AREA - SUBAREA IV
LAND COST AT \$265,000 PER ACRE**

A. SITE		
1. Purchase Price of Property (30 acres [25 net usable] @ \$265,000 per acre)	\$7,950,000	
2. Environmental Mitigation Contingency Fund (10 acres @ \$30,000 per acre + 15 acres @ \$60,000 per acre)	\$1,200,000	
3. Appraisals	\$10,000	
4. Escrow/Title	\$8,000	
5. Surveys	\$10,000	
6. EIR	\$40,000	
7. Other (Legal)	\$7,500	
Site Subtotal		\$9,225,500
B. PLANS		
1. Architect's Fee	\$952,461	
2. DSA/CDE Plan Check	\$88,000	
3. Energy Analysis Fee	\$25,000	
4. Preliminary Tests	\$25,000	
5. Other	\$6,000	
Plans Subtotal		\$1,096,461
C. CONSTRUCTION		
1. New Construction (See Construction Cost Allowance Worksheet)	\$10,492,237	
2. Utility Services	\$300,000	
3. Off-Site Development	\$1,020,000	
4. Service-Site Development (\$37,000 per acre x 30)	\$1,110,000	
5. General Site Development (8% + \$15/acre) (8% x \$15,000 per acre) (\$891,000 + \$450,000)	\$1,289,379	
6. Technology (5% of Construction)	\$524,612	
7. Unconventional Energy	\$563,000	
Construction Subtotal		\$15,299,228
D. TESTS		\$104,000
E. INSPECTION		\$162,000
F. FURNITURE & EQUIPMENT		\$837,767
(\$6 x 103,806 = \$622,836) + (\$10 x 2,160 = \$21,600) + Cost Index Factor of 1.30		
Total Items A-F		\$26,724,956
G. CONTINGENCIES (\$2,000 + 1.5% of total of items A-F)		\$402,874
H. ITEMS NOT FUNDED BY OFFICE OF PUBLIC SCHOOL CONSTRUCTION*		\$1,258,612
I. TOTAL ESTIMATED COST		\$28,386,442
*ADDITIONAL PROJECT COSTS		
Technology F&E @ additional 5% of construction		\$524,612
Library books (8 books/student @ \$20/book)		\$217,000
Landscaping (@ \$.44/sq. ft. x 1,089,000 sq. ft.)		\$479,000
Landscape architect fees @ 8%		\$38,000
TOTAL PROJECT COSTS NOT FUNDED BY OFFICE OF PUBLIC SCHOOL CONSTRUCTION		\$1,258,612

**POWAY UNIFIED SCHOOL DISTRICT
SUMMARY OF ESTIMATED COSTS - HIGH SCHOOL
CITY FUTURE URBANIZING AREA - SUBAREA IV
LAND COST AT \$265,000 PER ACRE**

A. SITE		
1. Purchase Price of Property (65.3 acres [60 net usable] @ \$265,000 per acre)	\$17,304,500	
2. Environmental Mitigation Contingency Fund (72 acres @ \$60,000 per acre + 15 acres @ \$60,000 per acre)	\$4,320,000	
3. Appraisals	\$15,000	
4. Escrow/Title	\$15,000	
5. Surveys	\$25,000	
6. EIR	\$60,000	
7. Other (Legal)	\$10,000	
Site Subtotal		\$21,749,500
B. PLANS		
1. Architect's Fee	\$1,754,864	
2. DSA/CDE Plan Check	\$170,000	
3. Energy Analysis Fee	\$30,000	
4. Preliminary Tests	\$40,000	
5. Other	\$10,000	
Plans Subtotal		\$2,004,864
C. CONSTRUCTION		
1. New Construction (202,449 sq.ft. @ \$100.55 per sq.ft. - includes 5% for technology)	\$19,662,192	
2. Utility Services	\$1,000,000	
3. Off-Site Development	\$1,625,000	
4. Service-Site Development (\$67,000 per acre x 72)	\$4,824,000	
5. General Site Development (8% of building allowance + \$15,000/acre) (\$1,629,000 + \$1,080,000)	\$2,652,975	
6. Technology (5% of Construction)	\$983,110	
7. Unconventional Energy	\$680,000	
Construction Subtotal		\$31,347,277
D. TESTS		\$350,000
E. INSPECTION		\$150,000
F. FURNITURE & EQUIPMENT (\$7 x 195,969 = \$1,371,783) + (\$10 x 6,480 = \$64,800) + Cost Index Factor of 1.30		\$1,867,558
Total Items A-F		\$57,469,199
G. CONTINGENCIES (\$2,000 + 1.5%)		\$864,038
H. ITEMS NOT FUNDED BY OFFICE OF PUBLIC SCHOOL CONSTRUCTION*		\$6,415,110
I. TOTAL ESTIMATED COST		\$64,748,347

***ADDITIONAL PROJECT COSTS**

Stadium with running track & seating for 500 - lights, pressbook, restrooms & concession stands, scoreboard, PA system, fencing, turfing, landscaping, ticket booths, etc.	\$1,300,000
Swimming pool (25 yd. x 25 meter) plus 10 yd. x 25 yd. Physically handicapped pool including 2,500 sq. ft. restrooms/office/storage, bleachers for 250, scoreboard, diving boards, fencing, etc.	\$2,300,000
Library books (10 books/student less 2 provided by the state) (8 books/student x 2,140 = 17,120 x \$20)	\$342,000
5% technology F&E (additional)	\$983,110
Landscaping (@ \$.44/sq. ft. x 3,136,320 sq. ft.)	\$1,380,000
Landscape architect fees @ 8%	\$110,000
TOTAL COSTS NOT FUNDED BY OFFICE OF PUBLIC SCHOOL CONSTRUCTION	\$6,415,110

EXHIBIT "C"

Form Certificate of Compliance

[LETTERHEAD OF POWAY UNIFIED SCHOOL DISTRICT]

_____, 199__

City Manager
City of San Diego
202 C Street
San Diego, CA 92101

Re: Certificate of Compliance for Building Permits
Subarea IV, Torrey Highlands Project
Final Subdivision Map No.: _____
Parcel/Lot Nos.: _____
Owner: _____

Dear _____:

The Poway Unified School District ("District") and the above identified Owner have entered into a School Impact Mitigation Agreement dated as of July 1, 1996 ("Mitigation Agreement") that provides for the mitigation of impacts on school facilities of the District caused by development of the Property. In consideration of the Owner's entry into and continued performance of the Mitigation Agreement, the recording of the Notice of Special Tax Lien recorded _____, 1996 as Document No. 96-_____, and the payment of the special taxes due pursuant thereto with respect to the above captioned Parcel/Lot Nos. ("Property"), the District hereby provides this certification to the City of San Diego ("City") that pursuant to Government Code Section 53080(b), the above referenced Property has complied with the requirements of the Mitigation Agreement and no fee charge or other requirement under such Section 53080(b) applies to the Property.

Notwithstanding anything to the contrary contained in Government Code Section 53080 or other applicable law, the District hereby determines that the City may issue building permits for development of any of the above described Property.

Very truly yours,

POWAY UNIFIED SCHOOL DISTRICT
By: Albert J. Abbott, Assistant Superintendent
Business Support Services

cc: [To Owner of Subject Property]

EXHIBIT “D”

**RATE AND METHOD OF APPORTIONMENT FOR
COMMUNITIES FACILITIES DISTRICT NO.2
OF THE POWAY UNIFIED SCHOOL DISTRICT**

An Annual Special Tax and a One-Time Special Tax shall be levied on and collected in Community Facilities District No. 2 (“CFD No. 2”) of the Poway Unified School District (the “School District”) in each Fiscal Year, in an amount determined through the application of the rate and method of apportionment described below. All of the real property in CFD No. 2, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**SECTION A
DEFINITIONS**

The terms hereinafter set forth have the following meanings:

“Acre” or “Acreage” means the land area of an Assessor’s Parcel as shown on an Assessor’s Parcel Map, or if the land area is not shown on an Assessor’s Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other recorded county parcel map.

“Act” means the Mello-Roos Communities Facilities Act of 1982 as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

“Administrative Expenses” means any ordinary and necessary expenses of the School District to carry out its duties as the legislative body of CFD No. 2.

“Annual Special Tax” means the Special Tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property to fund the Annual Special Tax. Requirement.

“Annual Special Tax Requirement” means the amount required in any Fiscal Year to pay: (1) the debt service on all Bonds or other indebtedness or other periodic costs on the Bonds or other indebtedness of CFD No. 2, (2) the cost of acquisition or construction of future Facilities, (3) Administrative Expenses of CFD No. 2, (4) the costs associated with the release of funds from an escrow account, (5) any amount required to establish or replenish any reserve funds established in association with the Bonds or other indebtedness of CFD No. 2, (6) lease payments for existing or future Facilities, and (7) any other payments permitted by law.

“Assessor’s Parcel” means a lot or parcel of land designated on an Assessor’s Parcel Map with an assigned Assessor’s Parcel Number.

“Assessor's Parcel Map” means an official map of the Assessor of the county designating parcels by Assessor’s Parcel Number.

“Assessor's Parcel Number” means that number assigned to an Assessor’s Parcel by the County Assessor for purposes of identification.

“Assigned Annual Special Tax” means the Annual Special Tax on an Assessor’s Parcel of Developed Property determined pursuant to Section C.1. below.

“Assistant Superintendent of Business” means the Assistant Superintendent of Business of the School District or his/her designee.

“Attached Unit” means an Assessor’s Parcel of Residential Property that consists of or shall consist of a building or buildings in which each of the individual Units have at least one common wall with another Unit.

“Board” means the Board of Education of the School District or its designee.

“Bonds” means any obligation to repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, which obligation may be incurred by CFD No. 2.

“Building Square Footage” or **“BSF”** for any Residential Property means the square footage of internal living space, exclusive of garages or other structures not used as living space, as determined by reference to the building permit application for such Assessor’s Parcel.

“CFD No. 2” means Community Facilities District No. 2 established by the School District under the Act.

“County” means the County of San Diego.

“Detached Unit” means an Assessor’s Parcel of Residential Property which is not an Attached Unit.

“Developed Property” means all Assessor’s Parcels in CFD No. 2 for which building permits for new construction were issued on or before March 1 of the prior Fiscal Year.

“Exempt Property” means the property designated as being exempt from special taxes in Section H.

“Facilities” means those school facilities (including land for school sites and required environmental mitigation) and other facilities which the School District is authorized by law to construct, own or operate and which would service the properties within CFD No. 2.

“Final Subdivision Map” means a final tract map, parcel map, lot line adjustment, or functionally equivalent map or instrument that creates building sites, recorded in the County Office of the Recorder.

“Fiscal Year” means the period commencing on July 1 of any year and ending the following June 30.

“Gross Prepayment Amount” for any Assessor’s Parcel of Developed Property means that gross prepayment amount calculated as provided in Section E.1.

“Index” means the Lee Saylor Class D Construction Index published by the State Allocation Board. In the event the Lee Saylor Class D Construction Index ceases to be published, the index used by the State Allocation Board in place of the school construction cost index, currently found in the monthly meeting agenda of the Lee Saylor Class D Construction Index shall be applied.

“Initial Assigned Annual Special Tax” means the Assigned Annual Special Tax for an Assessor’s Parcel which has been designated as Developed Property for the first time in that Fiscal Year.

“Land Use Class” means any of the classes of Developed Property listed in Table 1.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C, that can be levied by CFD No. 2 in any Fiscal Year on Taxable Property.

“One-Time Special Tax” means the single payment Special Tax to be levied in any Fiscal Year on each Assessor’s Parcel of Undeveloped Property.

“Partial Prepayment Amount” means the dollar amount required to prepay a portion of the Annual Special Tax obligation on any Assessor’s Parcel, determined pursuant to Section F.

“Prepayment Amount” means the dollar amount required to prepay all of the Annual Special Tax obligation on any Assessor’s Parcel, determined pursuant to Section E.

“Proportionately” means that the ratio of the actual Annual Special Tax levy to the applicable Maximum Annual Special Tax is equal for all applicable Assessor’s Parcels.

“Residential Property” means all Assessor’s Parcels of Developed Property for which the building permit was issued for purposes of constructing a Unit(s).

“Senior Citizen Housing Unit” means an Assessor’s Parcel of Residential Property within CFD No. 2. designated as senior citizen housing, residential care facilities for the elderly, or multi-level care facilities for the elderly as referred to in California Government Code Section 65995.1. For purposes hereof, it shall be sufficient to designate units as Senior Citizen Housing if Senior Citizen Restrictions have been effected.

“Senior Citizen Restriction” means (i) a restriction limiting the use of Units to senior citizen housing under the Subarea Plan, a final map or other governmental entitlements, or a declaration of covenants, conditions and restrictions or any similar recorded instrument or (ii) licensing from appropriate agencies received for residential care facilities for the elderly or multi-level care facilities as those terms are defined in Health and Safety Code Section 1569.2 and Government Code Section 15432(d)(9), respectively.

“**Special Tax**” means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property.

“**Subarea Plan**” means the Torrey Highlands Subarea Plan, draft dated June 10, 1996, and any amendments or implementing resolutions with respect hereto that do not increase the number of Units or other development affecting the need for Facilities.

“**Taxable Property**” means all Assessor’s Parcels within the boundaries of CFD No. 2 which are not exempt from the Special Tax pursuant to law or Section H below.

“**Undeveloped Property**” means all Assessor’s Parcels in CFD No. 2 for which no building permit was issued on or before March 1 of the prior Fiscal Year.

“**Unit**” means each separate residential dwelling unit which comprises an independent facility capable of conveyance separate from adjacent residential dwelling units. Each Unit shall be classified as either a Detached Unit or an Attached Unit.

**SECTION B
ASSIGNMENT TO LAND USE CLASSES**

For each Fiscal Year, beginning with Fiscal Year 1996-97, all Taxable Property within CFD No. 2 shall be classified as Developed Property, Undeveloped Property or Exempt Property, and each Assessor’s Parcel of Developed Property shall be assigned to a Land Use Class by reference to Table 1.

**TABLE 1
DEVELOPED PROPERTY LAND USE CLASSES FOR CFD NO. 2**

Land Use Class	Land Use
1	Detached Unit
2	Attached Unit
3	Senior Citizen Housing Unit

**SECTION C
MAXIMUM SPECIAL TAX**

1. Developed Property

The Maximum Special Tax for each Assessor's Parcel classified as Developed Property in any Fiscal Year shall be the sum of (i) the amount derived by the application of the Assigned Annual Special Tax, plus (ii) the amount of any portion of the One-Time Special Tax that is not collected at building permit with respect to an Assessor’s Parcel of Undeveloped Property which may be levied on such Assessor’s Parcel when classified as Developed Property in the following Fiscal Year. The Initial Assigned Annual Special Tax for each Assessor’s Parcel of Developed Property in Fiscal Year 1996-97 shall be the amount determined by reference to Table 2.

**TABLE 2
INITIAL ASSIGNED ANNUAL SPECIAL
TAXES FOR DEVELOPED PROPERTY**

Land Use Class	Land Use	Initial Assigned Annual Special Tax 1996-97
1	Detached Unit	\$1,875 per Unit
2	Attached Unit	\$772 per Unit
3	Senior Citizen Housing Unit	\$0.00 per Unit

Each July 1, commencing July 1, 1997, the Initial Maximum Annual Special Tax on each Assessor's Parcel of Developed Property shall be increased by the greater of the annual percentage change in the Index or two percent (2.00%) of the amount in effect in the prior Fiscal Year. The annual percentage change in the Index shall be calculated for the twelve (12) months ending December 31 of the prior Fiscal Year. For Fiscal Years following the Fiscal Year in which the Initial Maximum Annual Special Tax was applied, the Assigned Annual Special Tax shall be increased by two percent (2.00%) of the amount in effect in the prior Fiscal Year.

2. Undeveloped Property Maximum Special Tax

The Maximum Special Tax for any Assessor's Parcel classified as Undeveloped Property in in any Fiscal Year shall be the sum of the Annual Special Tax and the One-Time Special Tax applicable to such Assessor's Parcel in such Fiscal Year.

a. Annual Special Tax

The Annual Special Tax per acre of an Assessor's Parcel classified as Undeveloped Property in Fiscal Year 1996-97 shall be the amount required to (i) pay debt service or bonds issued to acquire the elementary, middle and high school sites in Subarea IV, (ii) pay Administrative Expenses for the Fiscal Year, and (iii) provide 110 percent debt service coverage divided by all Undeveloped Property, and shall not exceed \$100 per acre. On each July 1, commencing July 1, 1997, the Maximum Annual Special Tax on each Assessor's Parcel of Undeveloped Property shall be increased by two percent (2.00%) of the amount in effect in the prior Fiscal Year.

b. One-Time Special Tax

The One-Time Special Tax shall be levied and collected for each Assessor's Parcel of Undeveloped Property on or before the date a building permit for Residential Property is issued for such Assessor's Parcel. The One-Time Special Tax shall be in an amount equal to \$1.84 per square foot of Building Square Footage for Land Use Classes 1 and 2 and \$0.30 per square foot of Building Square Footage for Land Use Class 3. On each March 1, commencing March 1, 1997, the amount of the One-Time Special Tax shall be increased by the greater of the annual percentage change in the Index or two percent (2.00%) of the amount in effect in the prior Fiscal Year. The annual percentage change in the Index shall be calculated for the twelve (12) months ending December 31 of the prior Fiscal Year.

**SECTION D
METHOD OF APPORTIONMENT
OF THE ANNUAL SPECIAL TAX**

Commencing Fiscal Year 1996-97 and for each subsequent Fiscal Year, the Assistant Superintendent of Business shall determine the Annual Special Tax Requirement to be collected from Taxable Property in CFD No. 2 in such Fiscal Year. The Special Tax shall be levied as follows until the amount of the levy equals the Annual Special Tax Requirement:

First: The Annual Special Tax shall be levied on each Assessor's Parcel of Developed Property at the Maximum Special Tax applicable to such Assessor's Parcel.

Second: If the sum of the amounts levied on Assessor's Parcels in the first step above is less than the Annual Special Tax Requirement, then the Annual Special Tax shall be levied on each Assessor's Parcel of Undeveloped Property up to the Maximum Special Tax applicable to such Assessor's Parcel to satisfy the Annual Special Tax Requirement.

**SECTION E
PREPAYMENT OF ANNUAL SPECIAL TAX**

The Annual Special Tax obligation of an Assessor's Parcel of Developed Property or an Assessor's Parcel of Undeveloped Property for which a building permit has been issued may be prepaid. An owner of an Assessor's Parcel intending to prepay the Annual Special Tax obligation shall provide CFD No. 2 with a written notice of intent to prepay. Within 30 days of receipt of such written notice, CFD No. 2 shall notify such owner of the Prepayment Amount of such Assessor's Parcel.

1. Prior to Issuance of Bonds

Prior to the issuance of any Bonds, the Prepayment Amount for each Assessor's Parcel of Developed Property shall be the amount equal to the Gross Prepayment Amount minus the amount of One-Time Special Tax paid with respect to such Assessor's Parcel. The Gross Prepayment Amount for Fiscal Year 1996-97 is (i) \$18,391 for each Detached Unit and (ii) \$7,891 for each Attached Unit. On July 1, commencing July 1, 1997, the Gross Prepayment Amounts shall be increased by the greater of the annual percentage change in the Index or two percent (2.00%) of the amount in effect in the prior Fiscal Year. The annual percentage change in the Index shall be calculated for the twelve (12) months ending December 31 of the Fiscal Year.

2. Subsequent to Issuance of Bonds

After the issuance of any Bonds, the Prepayment Amount for each Assessor's Parcel of Developed Property shall be the amount equal to the Gross Prepayment Amount (as calculated in Section E.1) minus (i) the amount of One-Time Special Tax paid and (ii) the amount of regularly scheduled principal of such Bonds retired in CFD No. 2 with respect to such Assessor's Parcel, which amount shall be determined by multiplying (a) the amount of regularly scheduled principal that has been retired on such Bonds, times (b) the percentage determined by reference to Table 3.

**TABLE 3
PRINCIPAL RETIREMENT PERCENTAGE
FOR DEVELOPED PROPERTY**

Land Use Class	Land Use	Principal Retirement Percentage
1	Detached Unit	0.0430%
2	Attached Unit	0.0184%

**SECTION F
PARTIAL PREPAYMENT OF SPECIAL TAX**

At the time residential Final Subdivision Map is recorded for any Taxable Property within CFD No. 2, the property owner filing said Final Subdivision Map for recordation concurrently may elect for all of the Assessor’s Parcel created by said Final Subdivision Map to prepay all or any portion of the applicable future Maximum Special Taxes. In order to prepay all or any portion of the applicable future Maximum Special Taxes, the residential Final Subdivision Map must contain at least 25 Detached Units or 50 Attached Units. The partial prepayment of the Annual Special Tax shall be collected at the time of the issuance of a building permit. The Partial Prepayment Amount shall be calculated according to the following formula:

$$PP = P_E \times F.$$

These terms have the following meanings:

PP = the Partial Prepayment Amount,

P_E = the Prepayment Amount calculated according to Section E

F = the percent by which the owner of the Assessor’s Parcel is partially prepaying the Annual Special Tax obligation.

The owner of any Assessor’s Parcel who desires such partial prepayment shall notify the Board of (i) such owner’s intent to partially prepay the Annual Special Tax obligation and, (ii) the percentage by which the Annual Special Tax obligation shall be prepaid. The Board shall provide the owner with a statement of the amount required for the partial prepayment of the Annual Special Tax obligation for an Assessor’s Parcel within ten (10) working days of the request and may charge a reasonable fee for providing this service.

With respect to any Assessor’s Parcel that is partially prepaid, the Board shall indicate in the records of CFD No. 2 that there has been a partial prepayment of the Annual Special Tax and shall cause a suitable notice to be recorded in compliance with the Act within 30 days of receipt of such partial prepayment of Annual Special Taxes, to indicate the partial prepayment of Annual Special Taxes and the partial release of the Annual Special Tax lien on such Assessor’s Parcel, and the obligation of such Assessor’s Parcel to pay such prepaid portion of the Annual Special Tax shall cease. The portion of the Annual Special Tax with respect to any Assessor’s Parcel, equal to the outstanding percentage (1.00 - F) of the remaining Maximum Annual Special Tax, shall continue to be levied on such Assessor’s Parcel.

The amount of the Partial Prepayment Amount deposited in the applicable redemption fund may be in an amount able to redeem other than a \$5,000 increment of Bonds. In such cases, the increment above \$5,000 or integral multiple thereof will be retained in the applicable redemption fund to be used with the next prepayment of Bonds.

Notwithstanding the foregoing, no partial prepayment shall be allowed unless the amount of Maximum Annual Special Taxes that may be levied on Taxable Property within CFD No. 2 both prior to and after the proposed partial prepayment is at least 1.1 times annual debt service on all Outstanding Bonds.

SECTION G TERMINATION OF SPECIAL TAX

The Annual Special Tax shall be levied for a term of twenty-five (25) Fiscal Years after the last bond series is issued for CFD No. 2, but in no event shall the Annual Special Tax be levied later than Fiscal Year 2045-46.

SECTION H EXEMPTIONS

The Assistant Superintendent of Business shall not levy a Special Tax on properties owned by the State of California, Federal or other local governments except as otherwise provided in Sections 53317.3, 53317.5 and 53340.1 of the Government Code or on properties within the boundaries of CFD No. 2 which are used as places of worship and are exempt from *ad valorem* property taxes because they are owned by a religious organization. Notwithstanding the above, the Assistant Superintendent of Business shall not levy a Special Tax on (i) properties owned by a homeowners' association or (ii) properties with public or utility easements making impractical their utilization for other than the purposes set forth in the easement or (iii) Assessor's Parcels composed entirely of land irrevocably offered for dedication to the City as open space provided that the owner of such land has, prior to March 1 with respect to the following Fiscal Year, delivered to the Assistant Superintendent of Business satisfactory evidence of the continued effect of such irrevocable offer and its coverage of the entire Assessor's Parcel, or (iv) that portion of any Assessor's Parcel designated in the Subarea Plan as a school site which is subject to an existing contract to sell such property to the District for school purposes.

SECTION I APPEALS

Any property owner claiming that the amount or application of the Special Tax is not correct may file a written notice of appeal with the Assistant Superintendent of Business not later than one (1) calendar year after having paid the first installment of the Special Tax that is disputed. The Assistant Superintendent of Business shall promptly review the appeal, and if necessary, meet with the property owner, consider written and oral evidence regarding the amount of the Special Tax and rule on the appeal. If the Assistant Superintendent of Business's decision requires that the Special Tax for an Assessor's Parcel be modified or

changed in favor of the property owner, a cash refund shall not be made (except for the last year of levy), but an adjustment shall be made to the Annual Special Tax on that Assessor's Parcel in the subsequent Fiscal Year(s).

SECTION J
MANNER OF COLLECTION

The Annual Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes, provided, however, that CFD No. 2 may collect Annual Special Taxes at a different time or in a different manner if necessary to meet its financial obligations. The One-Time Special Tax shall be collected prior to the issuance of a building permit and if not so collected may be added to the levy on the tax rolls in the next following Fiscal Years.

EXHIBIT "E"

Mitigation Credit

\$ _____
Stated Amount

_____, 199__
Issuance Date

FOR VALUE RECEIVED, the undersigned, Poway Unified School District ("District"), hereby issues to _____, a California _____ ("Holder"), this Mitigation Credit, which is issued pursuant to the terms of that certain _____ School Site Transfer Agreement and Escrow Instructions dated as of July 1, 1996 ("Agreement"), between the District and _____, a California _____ ("Owner") and the related Torrey Highland School Impact Mitigation Agreement dated as of July 1, 1996 (the "Mitigation Agreement"), entered into by Owner, the District and other land owners identified therein. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement and the Mitigation Agreement.

All or any portion of the Stated Amount of this Mitigation Credit may be tendered to, and shall be accepted by District in lieu of cash on a dollar-for-dollar basis in satisfaction of the required payment of Mitigation Payments or One-Time Special Taxes or the Gross Prepayment Amount due to District under the Mitigation Agreement and applicable to the development of any property within the Torrey Highlands Subarea Plan approved by the City Council of the City of San Diego on July __, 1996. Upon tender to District, this Mitigation Credit shall be canceled by District; provided, however, that District shall issue a new Mitigation Credit to the registered Holder hereof in a Stated Amount equal to the portion of the Stated Amount of this Mitigation Credit, if any, that is not applied to the payment of Mitigation Payments or One-Time Special Taxes or the Gross Prepayment Amount pursuant to the Mitigation Agreement.

The District will keep in its office of Assistant Superintendent, Business Support Services, sufficient books for the registration and transfer of Mitigation Credits which books (the "Register") shall show the number, date, stated amount and last known owner of each Mitigation Credit and shall at all times be open to inspection by any Holder of a Mitigation Credit during regular business hours upon reasonable notice, and, upon presentation for such purpose, the District, under such reasonable regulations as it may prescribe, shall register or transfer or cause to be registered or transferred, on said books, the ownership of the Mitigation Credits. Ownership of any Mitigation Credit may be transferred only upon the Register by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Mitigation Credit for cancellation, accompanied by delivery of a duly written form of transfer, approved by the District. Whenever a Mitigation Credit is surrendered for transfer, the District shall execute and deliver a new Mitigation Credit for a like aggregate Stated Amount.

This Mitigation Credit shall be governed and construed in accordance with the laws of the State of California. This instrument is intended to function as an equivalent to cash in all

respects for the payment of Mitigation Payments, One-Time Special Taxes and Gross Prepayment Amounts due to District under the Mitigation Agreement. Accordingly, this Mitigation Credit shall not be subject to any offsets or defenses that District may have, including defenses based on diligence, presentment, protest, demand and notice of every kind and (to the fullest extent permitted by law), any statute of limitations. District hereby agrees that no failure on the part of the Holder of this Mitigation Credit to exercise any power, right or privilege hereunder, or to insist upon prompt compliance with the terms hereof, shall constitute a waiver hereof. This Mitigation Credit shall not expire or be canceled except to the extent used to pay Mitigation Payments, One-Time Special Taxes and Gross Prepayment Amounts. The District may redeem this Mitigation Credit at any time upon written notice to the Holder hereof and the payment, or setting aside for payment, to such Holder of the Stated Amount of this Mitigation Credit.

District represents and warrants to Holder that the issuance of this Mitigation Credit has been duly authorized by District pursuant to a resolution by the Board of Education of District.

IN WITNESS WHEREOF, this Mitigation Credit is issued on the Issuance Date above written in Poway, California.

POWAY UNIFIED SCHOOL DISTRICT

By: _____

Attest:

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto _____
_____ this Mitigation Credit.

Dated: _____

EXHIBIT "F"

RECORDING REQUESTED BY:)
)
 _____)
 _____)
 _____)
)
 WHEN RECORDED MAIL TO:)
)
 Luce, Forward, Hamilton & Scripps LLP)
 600 West Broadway, Suite 2600)
 San Diego, CA 92101)
 Attn: Thomas A. May, Esq.)
)

Above Space for Recorder's Use

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is entered into as of _____, 199__ by and between, _____, a ("Assignor") and _____, a ("Assignee").

RECITALS

A. Assigner is the owner of that certain real property located in the County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). The Property is part of Subarea IV identified in the Framework Plan for the North City Future Urbanizing Area, February 1995, as amended of the City of San Diego (the "City"), as further identified in the Torrey Highlands Subarea Plan, draft dated July __, 1996 (the "Subarea Plan") approved by the City Council of the City of San Diego on July __, 1996.

B. In connection with the preparation of the Subarea Plan, Assignor and the Poway Unified School District (the "District") entered into that certain Subarea IV Torrey Highlands School Impact Mitigation Agreement, dated as of July 1, 1996 and recorded as Instrument No. _____ in the official records of the San Diego County Recorder's Office (the "Mitigation Agreement") a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

C. In connection with its sale of the Property to Assignee, Assignor desires to assign all of its rights and obligations with respect to the Property under the Mitigation Agreement to Assignee and Assignee desires to accept such assignment and assume such obligations under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above recitals and the terms and conditions herein set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment and Deletion. Concurrent with Assignor's conveyance of the Property to the Assignee, Assignor hereby assigns to Assignee all of Assignor's right, title and interest under the Mitigation Agreement with respect to the Property (the "Assigned Interests") and delegates to Assignee all of Assignor's duties and obligations under the Mitigation Agreement with respect to the Property (the "Delegated Obligations").

2. Acceptance and Assumption. Assignee hereby accepts Assignor's assignment to Assignee of the Assigned Interests and assumes and shall perform the Delegated Obligations as if named as an original party to the Mitigation Agreement and upon execution of the attached Consent and Release by District the Assignee shall be deemed a party to the Mitigation Agreement and an "Owner" as defined therein.

3. Assignor's Warranties. Assignor warrants to Assignee that (a) the Mitigation Agreement is in full force and effect and unmodified, (b) Assignor has full and lawful authority to assign its interest in the Mitigation Agreement with respect to the Property in accordance with the terms of the Mitigation Agreement and (c) as of the date of this Agreement, there is no default by Assignor under the Mitigation Agreement or any circumstances which by lapse of time or after notice would be a default under the Mitigation Agreement. These warranties shall survive the execution of this Agreement.

4. Mutual Indemnification. Assignor shall defend and indemnify Assignee from and against any and all loss, liability and expense (including, without limitation, reasonable attorneys' fees and costs) arising out of any breach by Assignor of its warranties contained in this Agreement; and Assignee shall defend and indemnify Assignor from and against any loss, liability and expense, including, (without limitation, reasonable attorneys' fees and costs) arising out of any breach by Assignee of its agreements contained herein.

5. Joint and Several Liability. If the term "Assignee" refers to more than one (1) corporation, partnership, trust, association, other entity or individual, their liability under this Agreement shall be joint and several and they assume the Delegated Obligations jointly and severally.

6. Entire Agreement. This Agreement embodies the entire agreement of Assignor and Assignee with respect to the subject matter of this Agreement, and it supersedes any prior agreements, whether written or oral, with respect to the subject matter of this Agreement.

7. Binding Effect. The terms and conditions of this Agreement will inure to the benefit of, and will be binding on, the successors, assigns, personal representatives, heirs, executors, devisees, administrators, trustees and legatees of Assignor and Assignee.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the date first set forth above.

ASSIGNOR:

ASSIGNEE:

_____, a

_____, a

By: _____
Its: _____

By: _____
Its: _____

CONSENT AND RELEASE

District hereby consents to the foregoing Assignment and Assumption Agreement and hereby releases Assignor as provided below on the express condition that District's consent shall not be deemed a consent to any subsequent assignment, but rather any subsequent assignment shall require the consent of District (or approval of the assumption agreement to be signed by the proposed assignee if such assumption agreement is not substantially in the form of the above Assignment and Assumption Agreement) pursuant to and in accordance with the terms and conditions of the Mitigation Agreement .

Subject to the foregoing condition, District hereby releases Assignor from the Delegated Obligations.

APPROVED AS TO-FORM:

DISTRICT:

Luce, Forward, Hamilton & Scripps LLP
Legal Counsel
Poway Unified School District

Poway Unified School District

By: _____
Thomas A May, Esq.
Partner

By: _____
Albert J. Abbott
Assistant Superintendent,
Business Support Services

**TORREY HIGHLANDS SUBAREA PLAN
APPENDIX B**

RECOMMENDED PLANT LIST

TORREY HIGHLANDS RECOMMENDED PLANT LIST

Trees	Evergreen	Deciduous	Flowers	Full Sun Tolerant	Shade Tolerant	Drought Tolerant	Street Tree	Parking Lot Tree	Pedestrian/Plaza Tree	Shade tree	Accent/Entry Tree	Screen Tree	Slope Tree
Botanical Name - Common Name	Characteristics						Primary Uses						
<i>Alnus rhombifolia</i> - White Alder		●		●						●		●	
<i>Cinnamomum camphora</i> - Camphor Tree	●			●			●	●	●	●			
<i>Cupaniopsis anacardioides</i> - Carrot Wood	●			●			●	●	●	●			
<i>Eriobotrya deflexa</i> - Bronze Loquat	●		●	●	●	●			●		●		
<i>Erythrina coralloides</i> - Naked Coral Tree		●	●	●					●		●		
<i>Eucalyptus citriodora</i> - Lemon Scented Gum	●			●	●	●	●	●					●
<i>Eucalyptus cladocalyx</i> - Sugar Gum	●			●		●						●	●
<i>Eucalyptus maculata</i> - Spotted Gum	●			●		●	●	●					●
<i>Eucalyptus sideroxylon</i> 'Rosea' - Red Ironbark	●			●		●						●	●
<i>Ficus rubiginosa</i> - Rustyleaf Fig	●			●	●			●		●			
<i>Jacaranda mimosifolia</i> - Jacaranda		●	●	●					●		●		
<i>Koelreuteria bipinnata</i> - Chinese Flame Tree		●	●	●		●			●		●		
<i>Liquidambar styraciflua</i> - Sweet Gum		●		●			●		●				
<i>Magnolia grandiflora</i> - Southern Magnolia			●	●			●		●	●			
<i>Melaleuca quinquenervia</i> - Cajeput Tree	●			●		●			●		●	●	
<i>Metrosideros excelsus</i> - N.Z. Christmas Tree	●		●	●		●			●				●
<i>Pinus canariensis</i> - Canary Island Pine	●			●			●				●	●	
<i>Pinus elderica</i> - Mondell Pine	●			●		●						●	●
<i>Pinus halepensis</i> - Aleppo Pine	●			●		●						●	●
<i>Pinus pinea</i> - Stone Pine	●			●						●	●		
<i>Platanus acerifolia</i> - London Plane Tree		●		●			●	●	●				
<i>Podocarpus gracilior</i> - Fern Pine	●			●	●		●	●		●			
<i>Pyrus calleryana</i> 'Aristocrat' - Flowering Pear		●	●	●					●		●		
<i>Quercus ilex</i> - Holly Oak	●			●			●	●					
<i>Schinus molle</i> - California Pepper Tree	●			●		●						●	●
<i>Tipuana tipu</i> - Tipu Tree		●	●	●				●		●			
<i>Tristania conferta</i> - Brisbane Box	●			●		●	●	●					

For revegetation of natural areas, reference Appendix C Torrey Highlands Biological Resources Restoration and Enhancement Plan.

TORREY HIGHLANDS RECOMMENDED PLANT LIST

Shrubs	Evergreen	Large Shrubs	Flowering Shrubs	Full Sun Tolerant	Shade Tolerant	Drought Tolerant	Formal Fedge Shrubs	Parking Lot Areas	Pedestrian/Plaza Shrubs	Accent/Entry Shrubs	Foundation Shrubs	Screen/Background Shrubs	Slope/Erosion Control
Botanical Name - Common Name	Characteristics						Primary Uses						
Acacia longifolia - Sydney Golden Wattle	●	●	●	●		●						●	●
Acacia redolens - NCN	●		●	●		●						●	●
Agapanthus africanus - Lily of the Nile	●		●	●	●				●	●	●		
Agapanthus a. Queen Ann - Lily of the Nile	●		●	●	●				●	●	●		
Arbutus unedo - Strawberry Tree	●	●	●	●		●						●	●
Bougainvillea Crimson Jewel - NCN	●		●	●		●				●	●		●
Camellia sasanqua var. Camellia Varieties	●		●		●				●		●		
Clarissa m. Tuttle - Natal Plum	●		●	●		●	●	●	●		●		
Chamerops humilis - Mediterranean Fan Palm	●	●		●					●	●			
Cistus purpureus - Orchid Rock Rose	●		●	●		●		●		●			●
Cotoneaster lacteus - Red Clusterberry	●	●	●	●		●						●	●
Dietes bicolor - Yellow Butterfly Iris	●		●	●					●	●	●		
Eleagnus pungens 'Fruitland' - Silverberry	●	●		●		●						●	●
Escallonia compacta - Dwarf Escallonia	●		●	●		●	●	●	●		●		●
Grevillea 'Noelii' - NCN	●			●		●		●			●		
Heteromeles arbutifolia - Toyon	●	●	●	●		●						●	●
Hibiscus rosa-sinensis var. Hibiscus Varieties	●	●	●	●			●		●	●	●		
Ilex vomitoria nana - Dwarf Yaupon Holly	●			●	●		●		●		●		
Lantana camara var. - Lantana Varieties	●		●	●		●		●	●	●	●		●
Ligustrum j. Texanum - Texas Privet	●		●	●			●	●	●		●		
Liriope m. 'Big Blue' - Lily Turf	●		●		●				●	●	●		
Melaleuca nesophila - Pink Melaleuca	●	●	●	●		●						●	●
Myoporum laetum - NCN	●	●		●		●						●	●
Nandina domestica - Heavenly Bamboo	●				●				●	●	●		
Nerium oleander var. - Oleander Varieties	●	●	●	●		●	●			●		●	
Nerium o. Petite Salmon - Dwarf Oleander	●		●	●		●	●	●		●	●		●
Orphiopogon japonica - Mondo Grass	●				●				●				●
Phormium tenax - Dwarf New Zealand Flax	●			●		●				●	●		
Photinia fraseri - Fraser's Photinia	●	●	●	●		●						●	●
Pittosporum t. Variegata - Variegated Tobira	●			●	●	●	●	●	●		●		

For revegetation of natural areas, reference Appendix C Torrey Highlands Biological Resources Restoration and Enhancement Plan.

TORREY HIGHLANDS RECOMMENDED PLANT LIST

Shrubs (cont.)	Evergreen	Large Shrubs	Flowering Shrubs	Full Sun Tolerant	Shade Tolerant	Drought Tolerant	Formal Fedge Shrubs	Parking Lot Areas	Pedestrian/Plaza Shrubs	Accent/Entry Shrubs	Foundation Shrubs	Screen/Background Shrubs	Slope/Erosion Control
Botanical Name - Common Name	Characteristics						Primary Uses						
<i>Plumbago auriculata</i> - Blue Cape Plumbago	●	●	●	●		●				●			●
<i>Raphiolepis indica</i> var. - India Hawthorn	●		●	●	●		●	●	●	●	●		
<i>Rhus ovata</i> - Sugar Bush	●	●		●		●		●	●				●
<i>Rosmarinus officinalis</i> - Rosemary	●			●		●					●		●
<i>Strelitzia reginea</i> - Bird of Paradise	●			●	●				●	●	●		
<i>Syzygium paniculatum</i> - Dwarf Bush Cherry	●			●	●		●		●		●		
<i>Viburnum suspensum</i> - Sandankwa Viburnum	●	●	●	●	●	●	●	●	●	●	●	●	●
<i>Xylosma congestum</i> - Shiny Xylosma	●	●	●	●	●	●	●	●	●	●	●	●	●

Vines/Groundcover	Evergreen	Vines/Vine-like Plant	Flowering	Full Sun Tolerant	Shade Tolerant	Drought Tolerant	Wall/Fence/Espalier	Parking Lot Areas	Pedestrian/Plaza Shrubs	Accent/Entry Areas	Trailing Groundcover	Mass Planting	Slope/Erosion Control
<i>Acacia redolens</i> - NCN	●			●		●						●	●
<i>Bougainvillea Barbara</i> Karst - Bougainvillea	●	●	●	●		●	●			●		●	●
<i>Ceanothus g. horizontalis</i> - Carmel Creeper	●		●	●		●		●				●	●
<i>Clytostoma callistegioides</i> - Violet Trumpet Vine	●	●	●	●	●	●	●		●				
<i>Delosperma alba</i> - White Trailing Ice Plant	●		●	●		●		●			●	●	●
<i>Gelsemium sempervirens</i> - Carolina Jessamine	●	●	●	●		●	●		●	●	●	●	●
<i>Hedera helix</i> 'Hahnii' - Hahn's Ivy	●	●		●	●		●	●	●		●		●
<i>Lantana montevidensis</i> - Trailing Lantana	●		●	●		●	●	●	●	●	●	●	●
<i>Lonicera j. 'Halliana'</i> - Hall's Honeysuckle	●	●	●	●		●		●	●		●	●	●
<i>Myoporum parvifolium</i> - Prostrate Myoporum	●			●		●		●	●		●	●	●
<i>Pelargonium peltatum</i> - Ivy Geranium	●		●	●				●	●	●	●	●	
<i>Rosmarinus Prostratus</i> - Spreading Rosemary	●			●		●		●			●	●	●
<i>Tecomaria capensis</i> - Orange Cape Honeysuckle	●	●	●	●		●	●						
<i>Trachelospermum jasminoides</i> - Star Jasmine	●	●	●	●	●		●	●	●	●	●		

For revegetation of natural areas, reference Appendix C Torrey Highlands Biological Resources Restoration and Enhancement Plan.

APPENDIX C

APPENDIX D OF BIOLOGICAL REPORT: RESTORATION AND ENHANCEMENT PLAN

TORREY HIGHLANDS RESTORATION AND ENHANCEMENT PLAN

1.0 INTRODUCTION

This is a Restoration and Enhancement Plan for impacts to sensitive habitats from the proposed development for Torrey Highlands of the Future Urbanizing Area. A conceptual view of the restored MSCP Preserve within Subarea IV is depicted in the main biotechnical report (Figure 9). Torrey Highlands may revegetate portions of the MSCP Open Space using two different approaches: passive habitat recovery done prior to development and active habitat restoration done prior to or concurrently with development. This plan will address both passive and active habitat restoration, although it should be emphasized that because the passive restoration approach would be conducted prior to any impacts, the landowner will be allowed to do as much or as little as they choose with the understanding that the mitigation credits received for the habitat recovery will be based on the quality of the restored habitat. The passive restoration portion of the plan should be viewed as providing guidelines for restoration, not as requirements for passive restoration efforts. Because some of this restoration may occur over a number of years in the future, and given the relatively young age of restoration ecology as a science, this plan should be viewed as conceptual in nature with the option for flexibility to take advantage of newly developing methods of restoration and direction from resource agencies. Each section of the plan will address the two methods separately.

In an effort to maximize the chances of restoration success, a conceptual phasing approach will be developed for each parcel, which allows the owner to coordinate restoration with others within the MSCP Open Space. The consulting biologist will carefully review other planned and approved mitigation efforts in order to properly provide this coordination. Both the City and resource agencies will review and approve these plans and the City will maintain a record of approved mitigation efforts which can be reviewed by applicants and/or their consultants.

1.1 Purpose

The purpose of the passive and active restoration plan is to provide general guidelines, criteria, and methodologies by which sensitive habitats can be re-established. This document suggests design criteria, provides planting recommendations, and describes a monitoring program. At the specific project level, more detailed plans will need to be developed for individual habitat types and specific locations for active restoration prior to approval of any portion of the project at the Tentative Map level of review. The majority of this appendix discusses active restoration; however, passive restoration is a viable alternative for much of Torrey Highlands and is briefly discussed in section 3.3. Passive restoration efforts will also require the development of project-specific plans that establish the baseline condition of the site, techniques to be used, and identifies potential mitigation credits to be obtained upon successful completion. If any activities are proposed that would alter the native soils or vegetation, these would also need to be identified. These plans shall be approved by City staff in

consultation with the resource agencies and in the context of the vision of a completed plan (see Figure 9 of this biotechnical report) prior to initiation.

2.0 DESIGN CRITERIA

The general restoration design principle for both the active and passive approaches will be the creation of a functional ecosystem. The active restoration area(s) shall be hydroseeded and/or planted with selected container stock in a distribution pattern to approximate native species distribution and composition in the appropriate habitats.

2.1 Site Selection

All or a majority of the restoration will likely occur within the MSCP Preserve. Individual landowners will have the option, however, to complete their restoration outside of the preserve with approval by the City if these restoration efforts contribute to regional habitat preservation efforts. Areas of on-site restoration shall be prioritized to maximize wildlife values. A key component will be to maximize collectivity between larger blocks of natural open space. Several criteria shall be followed in selecting an on-site location for a restoration project. The proposed restoration site shall include either disturbed habitat of the type to be enhanced, or other disturbed, non-native habitats such as non-native grasslands, ruderal vegetation, and areas currently being used for agriculture, that can successfully be revegetated to support a functional native habitat. It is preferable that the restoration site be adjacent to existing native habitat(s). In this scenario, the restoration project is more biologically valuable than an isolated island of habitat and can benefit by the natural immigration of propagules, seeds and pollen from the existing habitat.

2.2 Site Preparation

The topsoil and plants within the native habitat(s) that are to be removed during the construction of the proposed project shall be salvaged and stockpiled in order to reintroduce nutrients, propagules, and soil microorganisms to the restoration site. This salvaged and stockpiled mixture should be redistributed over the area to be revegetated prior to hydroseeding and planting. Reclaiming the topsoil from the areas slated for development for restoration purposes is one of the best preparation techniques for any restoration project. There is debate as to which method is the most productive method of stockpiling soil in order to maintain a viable population of soil mycorrhizae, an important component to the success of a restoration program. One method is to create a deep hole to store the stockpiled soil and prevent this soil from getting wet. Another method is to stockpile the soil in a shallow pile and not attempt to keep the soil dry. These methods are critical when soil is stored for an extended period of time. It is best to handle the topsoil during the dormant stage of the mycorrhizae and plant propagules (mid-summer to early fall). Soil can be stored up to one year before mycorrhizal viability starts to decline (Ted St. John and Larry Sward pers. comm.).

Any grading that is to be done in preparing the restoration site shall be consistent with the adjacent topography in adjacent undisturbed areas. Finished slopes should be “imprinted,” a process that roughens and opens a smooth-closed air-earth

interface to accelerate water infiltration and restoration. If necessary, jute mat or other appropriate material should be applied to the restoration area to reduce potential erosion. Areas should be deep watered prior to hydroseed application.

2.3 Plant Materials and Installation Specifications

Implementation of the restoration plan(s) must be coordinated among the project biologist, landscape architect, landscape contractor, and plant material contractor. Site-specific construction drawings shall be prepared by a licensed landscape architect, with input from the project biologist and must be approved by the City of San Diego subsequent to the review of this document.

2.3.1 Responsibilities

Installation of the plant materials and the irrigation system, and the maintenance of the restoration area once the installation phase is complete should be the responsibility of the landscape contractor who is hired by the project applicant in consultation with the project biologist. Separate contractors may be used for the installation and maintenance phases of the restoration, at the direction of the applicant. The preparation of the landscape design should be the responsibility of the landscape architect with input provided by the project biologist. Implementation of the five-year monitoring program should be the responsibility of the project biologist. The project biologist and landscape architect will be hired by the project applicant. The entire restoration program will be the ultimate responsibility of the project applicant until assumed by the homeowners association or other management entity.

2.3.2 Mitigation Bonding

In order to ensure the success of mitigation done concurrently, the project proponents should enter into a five-year secured agreement with the City of San Diego to cover the projected cost to install, monitor, and maintain the mitigation project. This agreement should be in the form of a 110 percent bond. The bond should be structured so that portions of the bond may be released as interim milestones are met. Restoration efforts done in advance of impacts will not require any mitigation bonding unless there is the potential for detrimental impacts to native vegetation, such as installation of watering systems that may need to be removed if the restoration effort fails.

2.3.3 Species Composition

Species to be planted in the restoration area(s) should be similar to those that occur in the impacted habitat, or if there is similar habitat adjacent to the restoration site, the species composition of the restoration area should reflect the adjacent habitat's composition.

Sensitive plant species such as California adolphia and Del Mar manzanita will be included in the planting palettes where appropriate.

Site-specific plant palettes shall be developed from previous biological survey data of the site and during a pre-construction restoration plan site survey. The following tables provide conceptual planting palettes for several habitat types as well as for the urban amenity and transition zones for the project.

Diegan Coastal Sage Scrub

The following species and container sizes are recommended as the major constituents for the plant palette for the Diegan coastal sage scrub restoration plan.

Scientific Name	Common Name	Container Size
<i>Artemisia californica</i>	California sagebrush	liner, 1 gallon, hydroseed mix
<i>Eriogonum fasciculatum</i>	Flat-top buckwheat	liner, 1 gallon, hydroseed mix
<i>Heteromeles arbutifolia</i>	Toyon	liner, 1 gallon
<i>Malosma laurina</i>	Laurel sumac	liner, 1 gallon
<i>Rhus integrifolia</i>	Lemonade berry	liner, 1 gallon
<i>Opuntia littoralis</i>	Coast prickly pear	1 gallon
<i>Yucca schideigera</i>	Spanish bayonette	1 gallon
<i>Diplacus puniceus</i>	Coast monkey flower	hydroseed mix
<i>Salvia mellifera</i>	Black sage	hydroseed mix
<i>Encelia californica</i>	California encilia	hydroseed mix
<i>Stipa pulchra</i>	Purple needle grass	plugs, hydroseed mix
<i>Lotus scoparius</i>	Deerwed	hydroseed mix
<i>Lupinus succulentus</i>	Lupine	hydroseed mix
<i>Eriophyllum confertiflorum</i>	Golden yarrow	hydroseed mix
<i>Adolphia californica</i>	California adolphia	liner, 1 gallon

Scrub Oak Chaparral

The following species are recommended as the major constituents for the plant palette for the scrub oak chaparral restoration plan.

Scientific Name	Common Name	Container Size
<i>Quercus dumosaa</i>	Nuttall's scrub oak	1 gallon
<i>Comarostaphylos diversifolia</i>	Summer holly	1 gallon
<i>Heteromeles arbutifolia</i>	Toyon	1 gallon
<i>Rhus integrifolia</i>	Lemonade berry	1 gallon
<i>Cercocarpus minutiflorus</i>	San Diego mountain mahogany	1 gallon

Riparian Wetland

The following species are recommended as the major constituents for the plant palette for the riparian wetland restoration plan. The species in this list occur in a variety of habitats from willow scrub to freshwater marsh. The acronyms in the last column refer to the habitats that these species should be used in. SWS = southern willow scrub; MFS = mulefat scrub; FWM = coastal and valley freshwater marsh.

Scientific Name	Common Name	Container Size	Habitat
<i>Juncus acutus ssp. leopoldii</i>	Southwestern spiny rush	liner	SWS, MFS, FWM
<i>Iva hayesiana</i>	San Diego marsh elder	hydroseed	SWS, MFS, FWM
<i>Artemisia palmeri</i>	Palmer's sagewort	hydroseed	SWS, MFS, FWM
<i>Baccharis salicifolia</i>	Mulefat	liner	SWS, MFS
<i>Salix lasiolepis</i>	Arroyo willow	liner	SWS, MFS
<i>Typha latifolia</i>	Soft flag	liner	SWS, MFS, FWM
<i>Scirpus acutus</i>	Viscid bulrush	liner	SWS, MFS, FWM
<i>Platanus racemosa</i>	California sycamore	1 gallon	SWS
<i>Populus fremontii</i>	Western cottonwood	1 gallon	SWS

Transition Areas

Transition areas outside of the Buffer and Habitat Protection areas are used for landscaped transitions to developed areas. Local, native vegetation should be used as much as possible; but introduced drought-tolerant species may also be acceptable. The plant species used should serve to provide a smooth visual and functional transition between the native buffer zone and landscaped areas. Transition areas should prevent detrimental animal and plant species from invading the buffer and habitat areas, and to additionally protect those areas from the impacts of lighting or noise. Transition areas shall not be planted with non-native species invasive to the habitat or buffer zones (City of San Diego 1992).

It is assumed that the transition areas will characteristically be upland areas, so the recommended planting palette will reflect an upland species composition.

Scientific Name	Common Name	Container Size
<i>Artemisia californica</i>	California sagebrush	liner, 1 gallon, hydroseed mix
<i>Eriogonum fasciculatum</i>	Flat-top buckwheat	liner, 1 gallon, hydroseed mix
<i>Heteromeles arbutifolia</i>	Toyon	1 gallon
<i>Malosma laurina</i>	Laurel sumac	1 gallon
<i>Quercus dumosa</i>	Nuttall's scrub oak	5 gallon
<i>Rhus integrifolia</i>	Lemonade berry	1 gallon
<i>Opuntia littoralis</i>	Coast prickly pear	1 gallon
<i>Yucca schideigera</i>	Spanish bayonette	1 gallon
<i>Diplacus puniceus</i>	Coast monkey flower	hydroseed mix
<i>Salvia mellifera</i>	Black sage	hydroseed mix
<i>Encelia californica</i>	California encelia	hydroseed mix
<i>Stipa pulchra</i>	Purple needle grass	hydroseed mix
<i>Lotus scoparius</i>	Deerwed	hydroseed mix
<i>Lupinus succulentus</i>	Lupine	hydroseed mix
<i>Eriophyllum confertiflorum</i>	Golden yarrow	hydroseed mix
<i>Ceanothus verrucosus</i>	White coast ceanothus	1 gallon
<i>Adolphia californica</i>	California adolphia	1 gallon

Fire resistant non-native species to be used in Zone 1 of fire management areas include:

Scientific Name	Common Name	Container Size
<i>Ceanothus griseus horizontalis</i>	Carmel creeper	1 gallon
<i>Cistus crispus</i>	Descanso rockrose	1 gallon
<i>Rosmarinus officinalis 'Prostratus'</i>	Prostrate rosemary	1 gallon
<i>Santolina virens</i>	Green lavender cotton	1 gallon
<i>Phyla nodiflora</i>	Lippia	1 gallon

Urban Amenities

Urban amenity area(s) provide for passive recreational activities. It is assumed that these areas will also be upland areas, and that there will be no impacts to wetlands from this amenity. As such, plants appropriate for the restoration of MSCP lands are appropriate for these areas. Additional tree species may be favored for the urban amenity area to enhance the aesthetic value. These species include:

Scientific Name	Common Name	Container Size
<i>Quercus agrifolia</i>	Coast live oak	5 gallon
<i>Quercus engelmannii</i>	Engelmann oak	5 gallon
<i>Platanus racemosa</i>	California sycamore	5 gallon
<i>Populus fremontii</i>	Western cottonwood	5 gallon
<i>Alnus rhombifolia</i>	White alder	5 gallon

2.3.4 Plant Materials

Plant materials for the restoration area shall include liner or 1 gallon size container stock of the targeted, dominant shrub species. Container stock shall have been in the container for no longer than one year prior to installation. Seeds of other species to be used shall be included in the hydroseed mix. Plant propagules shall be collected as close to the restoration site as possible. Any substitutions of either plant species or container sizes must be approved by the project biologist. The nursery that provides plant materials shall be contacted at least one year prior to initiation of restoration efforts. It is required that the planting material be inoculated with mycorrhizae to enhance the success potential of the project. Mycorrhizal associations increase host plant nutrient uptake, especially phosphorus, by increasing the surface area of the root system (Ted St. John pers. comm.). Disturbed soils which lack mycorrhizal fungi should be pre-inoculated with mycorrhizal plants for the specific purpose of providing mycorrhizal inoculum. Needlegrass (*stipa pulchra*) plugs planted at five feet on center spacing (1,725 per acre) are suggested to accomplish this.

2.3.5 Planting Arrangement

Spacing of the container stock shall reflect the density and spatial patterns of any similar, adjacent mature habitat. The placement of plants in a clumped distribution pattern increases the immigration of wind blown propagules over an even spacing of plants (Dr. E. Allen pers. comm.). The design of the placement of the container stock material shall be the responsibility of the landscape architect with input from the project biologist and be incorporated into the landscape design. The exact placement of the plants in the field is left to the discretion of the project biologist.

2.3.6 Planting Procedure

Standard planting procedures for the container stock are as follows:

1. Dig a hole twice the size of the rootball of the plant.
2. Fill the hole with water and allow to drain. Repeat.
3. Position the plant so that the surface of the soil in the container is approximately one-half to one inch above the surrounding soil to ensure that water does not collect around the root crown leading to root crown rot.
4. Backfill the hole with excavated topsoil but do not compact the soil.

The hydro seeding mixture shall consist of seeds and mulch and shall be applied until the soil surface is uniformly covered.

2.3.7 Timing of Plant Installation

Planting and hydroseeding should occur between December 1 and February 1 to ensure the best survival rates and minimize the need for supplemental watering. If slope stabilization is necessary prior to these dates, materials such as jute matting should be used rather than adjusting planting dates. Seasonal rainfall serves to augment periodic irrigation and provides additional water resources during the critical period of establishment.

2.3.8 Irrigation Requirements

The goal of any restoration plan is to create a functional plant community capable of maintaining and supporting itself. Irrigation is discouraged for upland areas where it promotes conditions that favor weeds at the detriment of the native species. If a temporary irrigation system is needed, it should be designed to function for at least two years and then be discontinued. Traditionally, restoration programs have required an irrigation program that is active into and through the summer. There is recent debate that suggests summer irrigation of species that normally enter a dormant or semi-dormant

phase during the summer may be detrimental. A summer irrigation program would force these species to be physiologically active during a period of traditional dormancy (Ted St. John pers. comm.). The decision on whether to continue irrigation into the summer will be the responsibility of the project biologist with input from the landscape contractor.

A drip system shall be employed for the container stock and possibly any hydroseed areas that may require supplemental irrigation. Overhead irrigation systems should be discouraged on any upland areas because of the potential for increased runoff and erosion. Irrigation application shall be such as to ensure deep watering to promote deep root growth.

2.3.9 Replacement Planting

The restoration site will be inspected at the conclusion of the installation phase. Ninety days following this inspection, the project will be examined for hydroseed germination and container stock viability. Container stock that has not survived should be replaced. Eroded areas should be repaired and reseeded. Hydroseed areas larger than 25 square feet that show no significant germination should be re-hydroseeded or hand-seeded. Seeds in the hand-reseeded areas should be raked-in.

In late fall, following the first rains, the plants should again be checked for viability. If more than 10 percent of the original planted container stock has not survived, all the dead plant material should be removed and replaced with the same size material as was planted originally. Any deviation from the original material, either size or species should be the decision of the project biologist. Replacement plantings should be done in November or December. Replanting and rehydroseeding will be the responsibility of the landscape contractor.

3.0 MANAGEMENT PLAN

The purpose of the management plan is to provide guidelines for the maintenance of the revegetated habitat. Because the goal of the restoration plan is to create a natural self-sustaining ecosystem that can support itself with no maintenance, the primary effort of the maintenance plan is concentrated in the first few seasons of growth. The following maintenance and monitoring is based on a five-year plan.

3.1 Maintenance

1. Irrigation should be checked twice monthly. The revegetated areas shall be sprayed and drip irrigated at the direction of the project biologist. Irrigation should last for a minimum of two years and shall be removed only at the direction of the project biologist.
2. The site should not be fertilized during the maintenance period. Pesticides and herbicides shall not be used unless at the direction of the project biologist.

3. The revegetated area should not be pruned during the maintenance period.
4. Weedy, non-native species that invade the restoration areas should be hand removed when they reach six inches in size, and prior to creating any problems for the recently installed species. Potential problems include competition for water, space, or light.

3.2 Monitoring

The restoration effort should be assessed in early fall following the first summer after planting to determine survival rates, success of hydroseeding and the functioning of the irrigation system. The number, size, and species of dead plants should be recorded, along with percent cover. Success standards are outlined below.

Year 1

- 80 percent survival of all container plantings
- Shrub cover of between 20 and 30 percent
- A combined (native) shrub/herbaceous cover of between 25 and 40 percent
- Herbaceous (natives) cover of between five and ten percent

Year 2

- 75 percent survival of shrub planting
- Shrub cover of between 30 and 50 percent
- A combined (native) shrub/herbaceous cover of between 35 and 60 percent
- Herbaceous (natives) cover of between five and ten percent

Year 3

- 70 percent survival of shrub plantings
- Shrub cover of between 50 and 70 percent
- A combined (native) shrub/herbaceous cover of between 55 and 80 percent
- Herbaceous (natives) cover of between five and ten percent
- Height standards met for all shrubs (see below)

Years 4-5

- Shrub cover of between 60 and 80 percent
- A combined (native) shrub/herbaceous cover of between 65 and 90 percent
- Herbaceous (natives) cover of between five and ten percent
- Height standards met for all shrubs (see below)

Shrub Height Standards	Year 3	Year 4	Year 5
Toyon (1-gal.)	2-4 ft.	4-6 ft.	8 ft.
Lemonade berry (1-gal.)	2-3 ft.	3-4 ft.	5 ft.
Coastal prickly pear (1-gal.)	1-2 ft.	2-3 ft.	4 ft.
Red bush monkeyflower	0.5-1 ft.	1-2 ft.	3 ft.
California sagebrush (1-gal.)	0.5-1 ft.	1-2 ft.	3 ft.
Bladderpod (1-gal.)	0.5-1 ft.	1-2 ft.	3 ft.

In addition to vegetation requirements, the following wildlife use criteria will be met during the fifth year.

- Used as foraging habitat by at least ten bird species
- Part of nesting/breeding use area by at least five bird species
- Functions as part of a wildlife movement area. This will be measured by the presence of large mammal sign (scat or tracks), the presence of identifiable movement trails, or the actual visual sighting of large mammal use.

Bird use will be determined based on standard spot mapping or transect survey techniques. Evidence of breeding on site shall include the observation of actual nests, observation of courtship behaviors (male feeding female etc.), nest-building behavior (bird carrying nesting materials etc.), or the observation of fledglings/family groups using the site.

The restoration area shall be reviewed both qualitatively and quantitatively to assure the success. Qualitative assessments shall be made each spring following initial planting over the five-year monitoring period. During this visit, visual estimations of percent cover, survivorship and height shall be made. In addition, periodic inspections to assess the overall progress of the revegetated area shall be made monthly during the first 90, 120, and 150 days and twice a year thereafter over the five-year monitoring period.

Quantitative assessments of the vegetation shall be made each fall during the five-year monitoring period and consist of statistical analysis of percent cover, survivorship and height. In addition, a quantitative assessment of wildlife usage shall be conducted each spring. Photographic documentation of the restoration site should be completed and a report outlining the result of the monitoring activities shall be submitted to the City of San Diego Planning Department by December 1 of each year of monitoring.

The monitoring reports should describe the existing conditions of the site including photographs, identify the shortcomings of the restoration plan and recommend remedial measures necessary for the successful completion of the restoration project. On large restoration sites, aerial photographs may provide a more accurate documentation of the success of the program.

If coverage standards are not met by the end of the initial five-year monitoring program, maintenance and monitoring should continue until the standards are met for three additional years, or until the standards are met, whichever occurs first.

The U.S. Fish and Wildlife Service and/or other resource agency(s) may terminate monitoring earlier than five years if it is recommended first by the monitoring biologist in a year-end report. Likewise, if at the end of five years, any of the revegetated areas fail to meet the year five standards, then the monitoring and maintenance period will be extended one full additional year and a specific set of remedial measures (approved by the City and resource agencies) will be implemented. Only areas which fail to meet the success standards will require remedial work. This process will continue until all five year standards are met or until the resource agency(s) determine that other mitigation measures are appropriate.

Monitoring Reports

Upon completion of the mitigation installation, the restoration biologist and landscape architect shall prepare a letter report indicating that the installation is finished and that the five-year monitoring period has begun. At three, six and nine months, a brief horticultural monitoring report shall be made indicating initial project progress. At one year and thereafter, reports shall be made once annually. The annual reports shall include both botanical and horticultural observations. Any remedial recommendations shall also be made in the annual reports and will be responded to in writing within five (5) working days of receipt of the monitoring report. A summary of whether the project is meeting the success standards shall be included.

Copies of all monitoring reports will be sent to the City, U.S. Fish and Wildlife Service, and California Department of Fish and Game if required.

Remedial Measures

The various remedial measures that may be required are partly defined here, and will be left to the discretion of the project biologist. These remedial measures may include, but are not limited to the following:

- Increase or decrease the irrigation or change its frequency to improve growth.
- Modify the irrigation system to compensate for changes in plant growth or to correct problems that develop.
- Clear a vegetation-free zone and mulch around container stock to reduce competition and speed growth.
- Control weeds and other pests to reduce competition and improve vigor. (Note: specific pest control recommendations require a Pest Control Advisor's License.)
- Make additional plantings and/or substitute species to meet success standards.
- Replant dead and/or poorly growing container plants.
- Selective pruning to improve sprinkler coverage, induce lateral plant growth, favor the growth of one species over another, etc.

3.3 Passive Restoration

Passive restoration can take many forms and these will depend on the timing requirements and fiscal constraints. In general, passive restoration will take longer to reach the above success criteria because it does not rely on container stock or irrigation. The ultimate function and value of the passive restoration, however, would be equivalent to that of the active restoration. Conceptually, passive restoration is anything short of the above-described active restoration. Enhanced passive restoration could be seeding with native species, coastal sage soil and duff salvage and reapplication, controlled burns, etc. or a combination thereof. The approach; however, must do no harm to the current environment.

3.4 Final Resolution

If the project meets all success criteria at the end of the five-year monitoring period, mitigation will be considered a success. The maintenance and monitoring program shall be extended for one full year at a time until the standards are met, or until an alternative agreement is negotiated with the resource agency(s) if appropriate. While the goal is to create suitable habitat for the coastal California gnatcatcher, its presence and/or breeding within the restoration/revegetation/enhancement sites shall not be a factor in determining success of the revegetation effort. Numbers of gnatcatchers occupying on-site habitat will be noted each year, but no specific monitoring is required during the first five-year monitoring period.

Should the mitigation effort meet all goals prior to the end of the five-year monitoring period, the U.S. Fish and Wildlife Service and/or other resource agency(s) may terminate the monitoring period prematurely if all parties agree.

Passive restoration areas will be considered a success when they meet the same success criteria for coverage, percent composition, and shrub height standards as outlined for active restoration efforts. Passive restoration efforts will not be required to conduct any maintenance or monitoring efforts because the work is being proposed to be completed to any impacts occurring.